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THE CONSTITUTION OF THE UNITED STATES

BY THE SAME AUTHOR

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THE CONSTITUTION OF THE UNITED STATES

A BRIEF AND GENERAL COMMENTARY

BY

WILLIAM BENNETT MUNRO

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PREFACE

The Constitution of the United States can be read in half an hour, but an understanding of its provisions cannot be had by merely reading them. The purpose of this volume is to explain, in concise form and non-technical language, what the various clauses of the nation's fundamental law express and imply. It is for those who wish to acquire a general familiarity with the national constitution as a document, but who are not minded to follow all the intricacies of constitutional interpretation. Hence this brief commentary cuts loose from the welter of footnotes, references to judicial decisions, bibliographies and historical digressions which usually encumber books of its sort.

The reader who desires to pursue the subject further will find plenty of material in such standard and comprehensive treatises as Emlin McClain's *Constitutional Law in the United States* (N. Y., Longmans, Green & Co., 1916); C. K. Burdick's *Law of the American Constitution* (N. Y., G. P. Putnam's Sons, 1922); W. W. Willoughby's *Constitutional Law of the United States* (new edition, 3 vols., N. Y., Baker, Voorhis Co., 1929); and W. M. Meigs, *Growth of the Constitution* (3 vols., N. Y., Edward Thompson Co., 1924). Attention should also be called to the annotated edition of *The Constitution of the United States* issued by the Government Printing Office.

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THE CONSTITUTION OF THE UNITED STATES

A BRIEF AND GENERAL COMMENTARY

THE PREAMBLE

WE, THE PEOPLE OF THE UNITED STATES

The expression " We, the People of the United States " has no special significance. In the earlier drafts of the constitution all the states were named. It began: " We, the People of the States of New Hampshire, Massachusetts, Rhode Island," etc. But in the later days of the convention it was pointed out that some of these states might not ratify the new constitution, and that it would be an anachronism to have the names of such states included in the preamble. So the Committee on Style altered the phraseology to make it read, in less specific form " We, the People of the United States."

During the political controversies which preceded the Civil War, and more especially in the Nullification Controversy, it was argued by Daniel Webster and others that the term " We, the People " was intended to mean the people of the country as a whole, not the people of the several states, and that the constitution was accordingly a compact among the people, not an interstate compact. To this the Southern statesmen replied that the constitution was a compact among the states, not an agreement of the people, — in witness whereof they pointed to the very last clause of the constitu-

tion (Article VII) which provides for its establishment " between the states ratifying the same."

Perhaps it is worth while pointing out that the preamble does not form an integral part of a constitution, but is merely an introduction, without legal significance.

IN ORDER TO FORM A MORE PERFECT UNION,

A more perfect union, by which was meant a union more complete and more effective than had been established by the Articles of Confederation. Those who are familiar with the history of the thirteen states during the critical period intervening between the Declaration of Independence and the framing of the Constitution are well aware that the union established by the Articles of Confederation left a great deal to be desired.

ESTABLISH JUSTICE, INSURE DOMESTIC TRANQUILLITY,

By the words " establish justice " the framers of the constitution had in mind a common tribunal to take jurisdiction in controversies between the individual states. Such controversies were becoming frequent and serious. They were chiefly connected with disputed boundaries and trade rivalries. In addition there was need of some central power to insure domestic tranquillity, because such episodes as the Shays Rebellion (1786–1787) had shown how difficult it was for the individual states to deal effectively with even small outcroppings of disorder. Out of such controversies and disorders there was serious danger that a civil war, or perhaps several civil wars, would soon break out unless the country could provide itself with some tribunal to settle disputes and an executive power to enforce its decisions.

PROVIDE FOR THE COMMON DEFENCE,

There was also an urgent need for some provision in the interests of the common defence. The thirteen states, in 1787,

formed an island surrounded by European territories. Spain was still a power in America; so was France. Spain possessed not only the whole of Central America and the islands of the Caribbean, but was securely entrenched in Florida. France was still mistress of the great hinterland which came to be known as the Louisiana Territory. Great Britain held the whole half-continent to the north. What if these three nations should unite to reconquer and divide the thirteen states as spoil among themselves? America might meet the fate of Poland. Assuredly there was need of some union which would provide for the common defence by maintaining an army and creating a navy.

PROMOTE THE GENERAL WELFARE,

Much misunderstanding has arisen with reference to this clause in the preamble of the constitution. Some people imagine that it gives Congress a general right to "promote the general welfare" in whatever way it may think desirable. Hence one occasionally hears somebody suggest that Congress has a right to do this or that by virtue of its "general welfare" power. The national legislature has no such compendious authority. If it had power to promote the general welfare it would need no other powers, and there would have been no necessity to incorporate in the constitution the long list of specific powers which are enumerated in Article I, Section 8. No powers are given to the national government by this clause or any other clause of the preamble. The preamble is a statement of purposes, not a grant of jurisdiction.

AND SECURE THE BLESSINGS OF LIBERTY TO OURSELVES AND OUR POSTERITY,

This rhetorical flourish came from the pen of Gouverneur Morris, chairman of the Committee on Style. All governments, of course, are established with the avowed purpose of

securing and preserving the blessings of liberty. The history of the United States proves, however, that this purpose has been more nearly achieved in the New World than in the Old. The national constitution has on many occasions, at any rate, prevented the infringement of individual liberties at the hands of the states. It has kept most of the blessings intact.

DO ORDAIN AND ESTABLISH THIS CONSTITUTION FOR THE UNITED STATES OF AMERICA.

This enacting or ordaining clause was copied from the constitution of Massachusetts which had been framed seven years before.

ARTICLE I

SECTION 1. ALL LEGISLATIVE POWERS HEREIN GRANTED SHALL BE VESTED IN A CONGRESS OF THE UNITED STATES, WHICH SHALL CONSIST OF A SENATE AND HOUSE OF REPRESENTATIVES.

This provision means three things. In the first place it indicates that the constitution is a grant of powers. No legislative power belongs to the national government unless it has been expressly or by implication granted in the national constitution. That is the first and most fundamental among all principles of constitutional interpretation. In the second place, this section means that the legislative powers of the national government belong to the Congress of the United States and are not to be exercised by any other authority, whether executive or judicial. Legislative power must not be delegated. Finally, this initial section of the constitution establishes the bicameral system. The Congress of the Confederation consisted of a single chamber, in which every state had one vote. It represented the states equally, and not according to their respective populations. When the delegates at the Philadelphia Convention came together in 1787 it was found that the small states wanted this arrangement continued, while the larger states insisted that it be changed to a population basis. Out of this disagreement came the First Compromise which provided for a Senate based on the principle of state equality and a House of Representatives to give effect to the principle of representation according to population. Hence it is often said, and rightly, that the Senate was designed to represent the states and the House to represent the people.

SECTION 2. THE HOUSE OF REPRESENTATIVES SHALL BE COMPOSED OF MEMBERS CHOSEN EVERY SECOND YEAR BY THE PEOPLE OF THE SEVERAL STATES.

The two-year term of representatives was also a compromise. Some members of the convention desired that members of the House of Representatives should be elected annually; others favored a four-year term. In the end they compromised, providing that congressional elections should be held every second year. This means that the duration of the House of Representatives in the United States is absolutely fixed, which is not the case with lower chambers in European countries. In England, France, and Germany the House of Commons, Chamber of Deputies and Reichstag may be dissolved by the chief executive before the expiration of its term. In the United States this cannot be done.

AND THE ELECTORS IN EACH STATE SHALL HAVE THE QUALIFICATIONS REQUISITE FOR ELECTORS OF THE MOST NUMEROUS BRANCH OF THE STATE LEGISLATURE.

The term "electors" here means voters. The framers of the constitution were not ready to fix the qualifications for voting on a nation-wide scale. They could come to no agreement on that matter. Some desired the retention of property or taxpaying qualifications, while a few were for manhood suffrage. This difference of opinion was natural because the qualifications for voting differed in the several states. It was suggested, therefore, that each state be allowed to decide the matter for itself. So this provision means that whoever has the right to vote at elections for the lower house of the legislature in his own state becomes thereby vested with the right to vote at congressional elections. For a long time this resulted in a confusing situation, but it is so no longer because universal suffrage now exists in all the states for virtually all elections.

NO PERSON SHALL BE A REPRESENTATIVE WHO SHALL NOT HAVE ATTAINED THE AGE OF TWENTY-FIVE YEARS AND BEEN SEVEN YEARS A CITIZEN OF THE UNITED STATES, AND WHO SHALL NOT, WHEN ELECTED, BE AN INHABITANT OF THAT STATE IN WHICH HE SHALL BE CHOSEN.

The term inhabitant, as used in this section, means a legal resident of the state. The constitution does not require a congressman to be an inhabitant of the *district* from which he is chosen. It is enough that he be a resident of the state in which the district lies. Nor is it essential that he continue to be a resident of the state during his term of service. It is sufficient that he be a resident at the time of his election. As a matter of fact, however, it is an unwritten rule that a representative must actually live in the district from which he seeks election. In England, members of the House of Commons are frequently elected from districts in which they do not reside, but in the United States local feeling is too strong for anything of that sort except on the rarest occasions.

REPRESENTATIVES AND DIRECT TAXES SHALL BE APPORTIONED AMONG THE SEVERAL STATES WHICH MAY BE INCLUDED WITHIN THIS UNION, ACCORDING TO THEIR RESPECTIVE NUMBERS, WHICH SHALL BE DETERMINED BY ADDING TO THE WHOLE NUMBER OF FREE PERSONS, INCLUDING THOSE BOUND TO SERVICE FOR A TERM OF YEARS, AND EXCLUDING INDIANS NOT TAXED, THREE-FIFTHS OF ALL OTHER PERSONS.

This paragraph embodies another of the compromises made by the framers of the constitution. The first portion of it, relating to the apportionment of representatives, was inserted at the demand of the larger states such as Virginia and Pennsylvania. The second portion of the paragraph was inserted at the insistence of the Southern states, which included at this

time considerable bodies of negro slaves. The Northern states argued that in determining the population of a state as a basis of representation in Congress only free white persons should be counted. The Southern states, in keeping with their own self-interest, contended that the figures of population should include all persons, whether black or white, bond or free. For a time it seemed as if the convention might end in disruption over this controversy. But the delegates finally got together on a rather illogical arrangement, namely, that slaves be counted at sixty per cent of their face value. You will notice that in wording this provision, the terms "slave" and "slavery" were avoided. The Committee on Style managed to secure the desired end without using the terminology of bondage.

To-day the three-fifths provision is of no consequence because it has been superseded by the terms of the Fourteenth Amendment.

> THE ACTUAL ENUMERATION SHALL BE MADE WITHIN THREE YEARS AFTER THE FIRST MEETING OF THE CONGRESS OF THE UNITED STATES, AND WITHIN EVERY SUBSEQUENT TERM OF TEN YEARS IN SUCH MANNER AS THEY SHALL BY LAW DIRECT.

In every tenth year, beginning with 1790, a census of the United States has been taken by the federal government. After the first census, the size of the House was fixed at 103 members, for a population of about four million; and after each succeeding census down to 1920 a further apportionment was made, usually with an increase in the size of the House. Following the census of 1910 the total membership was fixed at 435. This figure was left unchanged after the census of 1920 and no new apportionment was made.

This failure of Congress to make a new apportionment after the census of 1920 was in disregard of an express requirement

of the constitution; but the matter was debated for several years without coming to any decision, and in 1928 Congress decided to let the reapportionment go over until after the census of 1930. Even though the requirement is an express one there is no authority in the United States, not even the Supreme Court, which can compel Congress to pass a bill, or the President to sign one, unless they choose to do it.

THE NUMBER OF REPRESENTATIVES SHALL NOT EXCEED ONE FOR EVERY THIRTY THOUSAND,

When the constitution was before the states for ratification, there was much criticism that this quota of representation had been set too high. In 1787 it seemed an absurdity that any congressman should expect to be personally known to as many as thirty thousand people. But if the House were to-day based on a quota as low as thirty thousand, it would have more than three thousand members. The original figure shows how modest were the expectations of the Fathers concerning the probable growth of the country in population.

BUT EACH STATE SHALL HAVE AT LEAST ONE REPRESENTATIVE;

Each state must have at least one representative, even though its population may be less than the prescribed quota. Three states of the Union now have one representative in Congress although their populations would not otherwise entitle them to a single congressman. These are Nevada, Arizona, and Delaware. Strange as it may sound, these three states are represented by six senators in a total of ninety-six and by only three representatives in a total of 435.

It should be pointed out that Congress does not itself perform the work of mapping out the congressional districts. Representatives are allotted to the several states, and the state legislatures are responsible for mapping out the districts. This they usually do by means of special committees. The

state legislatures are free to map out the congressional districts as they please, subject only to two limitations; first, that the districts must be approximately equal in population, and second, that all portions of a congressional district must be contiguous.

> AND UNTIL SUCH ENUMERATION SHALL BE MADE, THE STATE OF NEW HAMPSHIRE SHALL BE ENTITLED TO CHOOSE THREE, MASSACHUSETTS EIGHT, RHODE ISLAND AND PROVIDENCE PLANTATIONS ONE, CONNECTICUT FIVE, NEW YORK SIX, NEW JERSEY FOUR, PENNSYLVANIA EIGHT, DELAWARE ONE, MARYLAND SIX, VIRGINIA TEN, NORTH CAROLINA FIVE, SOUTH CAROLINA FIVE, AND GEORGIA THREE.

The above allotment provided for a House of sixty-five members, but the first House of Representatives did not in fact contain that number, for the reason that neither Rhode Island nor North Carolina had ratified the constitution when the first elections for the House were held.

> WHEN VACANCIES HAPPEN IN THE REPRESENTATION FROM ANY STATE, THE EXECUTIVE AUTHORITY THEREOF SHALL ISSUE WRITS OF ELECTION TO FILL SUCH VACANCIES.

Members of the House of Representatives sometimes die before the close of their terms. Occasionally, but not often, they resign. A representative may resign by merely handing his resignation to the Speaker. When a seat in the House becomes vacant, through death, resignation, or any other cause, the House does not itself order a new election. It devolves upon the governor of the state in which the vacancy arises to issue a writ calling a special election to fill the vacancy. The constitution, it will be noted, provides that the executive authority *shall* issue writs of election. Strictly speaking, this leaves the governor no discretion in the matter,

but as a matter of practice the governors have used their own discretion about ordering a special election if the vacancy occurs within a few months of a general election.

> THE HOUSE OF REPRESENTATIVES SHALL CHOOSE THEIR SPEAKER AND OTHER OFFICERS;

The office of Speaker was adapted from the English House of Commons, which had preserved for many centuries the right to select its own presiding officer. This officer was called the Speaker because he was the official spokesman of the House and communicated its proceedings to the king. The American constitution is notable for its brevity as respects this office. Nothing is said about the term for which the Speaker shall be chosen, or his powers, or whether he shall have the right to vote in case of a tie. All such matters are left to be determined by the rules of the House. The "other officers" now include the clerk of the House, the sergeant-at-arms, the chaplain, and various minor functionaries.

> AND SHALL HAVE THE SOLE POWER OF IMPEACHMENT.

At first sight this clause is somewhat confusing. What it means is that the House shall have the sole power to frame charges upon which an impeachment trial may be conducted by the Senate. The process of trial by impeachment was derived from England, where it had long been the custom for the House of Commons to make the charges and for the House of Lords to hear the evidence. The general procedure in the United States, as respects the beginning of an impeachment, is as follows: First of all, some member of the House of Representatives, on the floor of the House, brings charges against a civil officer of the government. These charges, if the House believes that they are deserving of investigation, are then referred to a special committee. This special committee of the House, after looking into the matter, may recommend

to the whole House that the charges be incorporated in articles of impeachment and transmitted to the Senate for action. When that is done, all further proceedings rest with the Senate. The House has no part in determining the verdict.

SECTION 3. THE SENATE OF THE UNITED STATES SHALL BE COMPOSED OF TWO SENATORS FROM EACH STATE, CHOSEN BY THE LEGISLATURE THEREOF, FOR SIX YEARS; AND EACH SENATOR SHALL HAVE ONE VOTE.

It was suggested in the constitutional convention that each state should have only one vote and only one senator, but two objections were raised to this proposition; first, that the Senate would then be a very small body with only thirteen members at the most, and, second, that in the event of a senator's absence his state would be left entirely without representation. So it was agreed that each state should have two senators, and each senator one vote, thus preserving the equality of the states in the Senate and circumventing the other objections.

The Senate was to represent the states, hence it was logical to provide (as the original constitution did) that they should be chosen by the state legislatures. The constitution did not prescribe, however, the way in which the legislatures should do the choosing; whether by the two Houses of the state legislature sitting apart or sitting together. So Congress filled this gap by a law which required that each House of the state legislature should first meet and vote separately. Then, if no candidate obtained a majority in both, the two Houses were to meet in joint session and ballot day after day until someone obtained a majority of the whole membership.

This procedure was used for more than a hundred years, but it became increasingly unsatisfactory. The choosing of a senator by the state legislatures, whether sitting separately

or in joint session, was frequently marked by log-rolling, bossism, and sometimes by corruption. Occasionally, after many days of balloting, it was found impossible to secure a majority for any candidate; in which case the state was left without its proper representation in the Senate — sometimes for weeks or months at a time. In some states the situation was remedied by establishing senatorial primaries. In other words, the people at the polls indicated their choice of a senator and then the state legislature, when it convened, was held to be morally bound by this popular choice. Meanwhile a movement for the direct election of senators gained strength, and eventually an amendment to the constitution made this change in 1913 (Amendment XVII).

The six-year senatorial term is an illustration of that give-and-take spirit which marked the work of the constitution-makers in 1787. Alexander Hamilton desired that senators should be chosen to hold office "during good behavior." Some others, including Roger Sherman and Elbridge Gerry, wished the term limited to one or two years. Six years was agreed upon as being adequate to give stability to the Senate without at the same time making the senators forgetful of their responsibility.

> IMMEDIATELY AFTER THEY SHALL BE ASSEMBLED IN CONSEQUENCE OF THE FIRST ELECTION, THEY SHALL BE DIVIDED AS EQUALLY AS MAY BE INTO THREE CLASSES. THE SEATS OF THE SENATORS OF THE FIRST CLASS SHALL BE VACATED AT THE EXPIRATION OF THE SECOND YEAR, OF THE SECOND CLASS AT THE EXPIRATION OF THE FOURTH YEAR, AND OF THE THIRD CLASS AT THE EXPIRATION OF THE SIXTH YEAR, SO THAT ONE-THIRD MAY BE CHOSEN EVERY SECOND YEAR;

This provision was designed to inaugurate the partial renewal of the Senate every second year. It was a conces-

sion to those who regarded a six-year term as too long. Under the operation of this provision, thirty-two senators are now elected every alternate year, but no state normally elects both its senators at the same time.

> AND IF VACANCIES HAPPEN BY RESIGNATION, OR OTHERWISE, DURING THE RECESS OF THE LEGISLATURE OF ANY STATE, THE EXECUTIVE THEREOF MAY MAKE TEMPORARY APPOINTMENTS UNTIL THE NEXT MEETING OF THE LEGISLATURE, WHICH SHALL THEN FILL SUCH VACANCIES.

This provision has been abrogated in part by the Seventeenth Amendment, which provides that when vacancies occur, the governor of the state shall issue writs of election to fill such vacancies, and that meanwhile he may make a temporary appointment pending such election in case the legislature of the state has so empowered him. The state legislature has also the power to direct whether the vacancy shall be filled at a special or a regular election.

> NO PERSON SHALL BE A SENATOR WHO SHALL NOT HAVE ATTAINED THE AGE OF THIRTY YEARS, AND BEEN NINE YEARS A CITIZEN OF THE UNITED STATES, AND WHO SHALL NOT, WHEN ELECTED, BE AN INHABITANT OF THAT STATE FOR WHICH HE SHALL BE CHOSEN.

The age limit was set at thirty years in the hope that the Senate would be made up of reasonably mature members. This hope has been more than realized, for the average senator has been over forty-five years of age. Nearly a century ago Henry Clay took his seat in the United States Senate before he had reached his thirtieth birthday. The Senate, of course, had the right to exclude him as being disqualified, but it did not do so and the lapse of a few months remedied the situation.

> THE VICE PRESIDENT OF THE UNITED STATES SHALL BE PRESIDENT OF THE SENATE, BUT SHALL HAVE NO VOTE, UNLESS THEY BE EQUALLY DIVIDED.

The Vice President was not given the right to vote on all matters because that would have given three votes to some one state of the Union and thus disturbed the principle of absolute state equality. In early days, when the Senate was a small body, tie-votes were frequent, and the Vice President was often called upon to break a deadlock. Sometimes this action was of far-reaching importance. John Adams, for example, kept the country out of war on one occasion during Washington's second term by the use of his casting vote. Nowadays, with a Senate of ninety-six members, tie-votes do not happen very often.

> THE SENATE SHALL CHOOSE THEIR OTHER OFFICERS, AND ALSO A PRESIDENT PRO TEMPORE, IN THE ABSENCE OF THE VICE PRESIDENT, OR WHEN HE SHALL EXERCISE THE OFFICE OF PRESIDENT OF THE UNITED STATES.

The Senate also chooses a president pro tempore who presides in the absence of the Vice President. When the Vice President succeeds to the presidency, this president pro tempore of the Senate presides regularly. There is one occasion when neither the Vice President nor the president pro tempore has the right to preside over the Senate's deliberations, namely, when the President is being tried by impeachment. In such case the constitution makes a special arrangement, as will be seen in the next paragraph.

> THE SENATE SHALL HAVE THE SOLE POWER TO TRY ALL IMPEACHMENTS. WHEN SITTING FOR THAT PURPOSE, THEY SHALL BE ON OATH OR AFFIRMATION. WHEN THE PRESIDENT OF THE UNITED STATES IS TRIED THE CHIEF JUSTICE

SHALL PRESIDE: AND NO PERSON SHALL BE CONVICTED WITHOUT THE CONCURRENCE OF TWO-THIRDS OF THE MEMBERS PRESENT.

The House of Representatives prepares the charges leading to an impeachment, as has already been explained, and the trial is conducted by the whole Senate. Before the trial begins, all the senators are required to take an oath in the same manner as judges. In case any senator has conscientious objections to the taking of an oath, he is permitted to take an affirmation. The proceedings in an impeachment trial are as in a regular trial by jury. Witnesses are heard and the accused official is permitted to be represented by counsel. At the conclusion of the evidence, these counsel address the Senate, which then goes into executive session and decides on its verdict. A two-thirds vote of those present is necessary for a conviction.

The Vice President occupies the chair at impeachments, as at other times, unless the President is being impeached. Then the Chief Justice of the Supreme Court presides. The reason, obviously, is that the Vice President would be an interested party — quite heavily interested, because he would succeed to the presidency in the event of a conviction.

There have been nine federal impeachments in all, but only two of them have come within the last half-century. Three of the nine resulted in convictions. The most notable cases were those of President Andrew Johnson in 1868 and William W. Belknap, Secretary of War, in 1876. There were eleven charges against President Johnson, most of them having to do with asserted violations of the Tenure of Office Act which Congress had passed over his veto in the previous year. The trial was conducted in an atmosphere of great personal bitterness. At its conclusion the Senate voted thirty-five to nineteen for conviction, which was only one vote short of the necessary two-thirds. Secretary Belknap was charged with

the acceptance of money from a trader whom he had appointed to an Indian post. To avoid an impeachment trial, he tendered his resignation to President Grant and it was accepted. Despite his resignation, the Senate voted to proceed with the impeachment and heard the evidence, but the necessary two-thirds vote for conviction was not obtained.

> JUDGMENT IN CASES OF IMPEACHMENT SHALL NOT EXTEND FURTHER THAN TO REMOVAL FROM OFFICE, AND DISQUALIFICATION TO HOLD AND ENJOY ANY OFFICE OF HONOR, TRUST OR PROFIT UNDER THE UNITED STATES: BUT THE PARTY CONVICTED SHALL NEVERTHELESS BE LIABLE AND SUBJECT TO INDICTMENT, TRIAL, JUDGMENT AND PUNISHMENT, ACCORDING TO LAW.

An official convicted upon impeachment cannot be sentenced to death, imprisonment, or fine. He may be removed from office and disqualified for the future, or, if he has already resigned, or if his term has expired, he may be disqualified from ever resuming office under the national government. It will be remembered that no pardon may be granted by any authority in the case of conviction after impeachment. If the convicted person has committed any violation of the law, he may also be indicted, tried, and punished in accordance with the terms of such law. Removal from office by impeachment does not preclude the imposition of heavier punishments by the regular courts.

> *SECTION* 4. THE TIMES, PLACES AND MANNER OF HOLDING ELECTIONS FOR SENATORS AND REPRESENTATIVES, SHALL BE PRESCRIBED IN EACH STATE BY THE LEGISLATURE THEREOF; BUT THE CONGRESS MAY AT ANY TIME BY LAW MAKE OR ALTER SUCH REGULATIONS, EXCEPT AS TO THE PLACES OF CHOOSING SENATORS.

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For more than half a century after the adoption of the constitution, the various states were permitted to control the times and manner of holding elections. Hence congressmen were elected, in many of the states, on a general ticket and not by congressional districts. One result of this was that the minority party in such states often secured no representation. In 1842, however, it was provided by law that members of the House of Representatives should everywhere be elected by districts and not at large. This plan still continues.

Until the third quarter of the nineteenth century, moreover, the elections were held in various states on different dates, but in 1872 it was made a statutory requirement that all congressional elections be held on the Tuesday after the first Monday in November. A congressional election takes place, therefore, on that date in every even-numbered year.

The question has arisen whether Congress, by virtue of its right to control the manner of holding elections, can also determine the procedure by which nominations are made. Can it set a limit on what a candidate may spend — not merely during the election campaign but in his contest for the nomination at the primaries? In 1910 Congress passed a statute known as the Corrupt Practices Act in which a limit was fixed to the amount which any candidate for a nomination might legally spend in the course of his nomination campaign. The Supreme Court held this law to be unconstitutional (in the Newberry case), holding that the selection of a party nominee was in no real sense a part of the "manner of holding elections." In other words, the right of Congress to determine the manner of electing its own members does not include the right to determine the manner of nominating them.

Nevertheless, the Senate and the House can control this matter in an indirect way, because both Houses have the right to determine the "returns and qualifications" of their own members, as provided in the next section of the constitution.

If, therefore, a majority of the members in the Senate or the House believes any one to have been elected to its ranks, or even nominated, by a process that has involved excessive expenditure or corruption, it can refuse to allow such member to take the oath, without which he cannot take his seat. Or, if he has already been given the oath, a two-thirds majority may expel him in either chamber. During the session of 1928 the United States Senate refused to admit two newly-elected senators on the ground that their nominations had been procured by excessive and illegal expenditures.

> THE CONGRESS SHALL ASSEMBLE AT LEAST ONCE IN EVERY YEAR, AND SUCH MEETING SHALL BE ON THE FIRST MONDAY IN DECEMBER, UNLESS THEY SHALL BY LAW APPOINT A DIFFERENT DAY.

Those who are familiar with the constitutional history of England will need no hint as to the reason why this provision was placed in the Constitution of the United States. During the Stuart period of English history, when action by the crown was necessary to convene parliament, it was not uncommon to withhold the call for years at a stretch. In one instance, during the reign of Charles I, eleven years passed without a single parliamentary session. The framers of the American Constitution desired to prevent such prolonged legislative intermissions. Hence they provided that Congress must assemble at least once in every year, and to make assurance doubly sure they set a definite date for such meeting.

No action on the part of the President is necessary to summon Congress into session. It meets automatically. Both Houses, under the terms of the constitution, go into session on the first Monday in December unless they have themselves provided by law for a different day. As a matter of fact, they have made no different provision. One of the yearly sessions of Congress always begins on that date. Under the existing

rules there are two sessions of every Congress; a long session and a short one. These two sessions occupy the two years for which a new House of Representatives is elected.

> *SECTION* 5. EACH HOUSE SHALL BE THE JUDGE OF THE ELECTIONS, RETURNS AND QUALIFICATIONS OF ITS OWN MEMBERS, AND A MAJORITY OF EACH SHALL CONSTITUTE A QUORUM TO DO BUSINESS; BUT A SMALLER NUMBER MAY ADJOURN FROM DAY TO DAY, AND MAY BE AUTHORIZED TO COMPEL THE ATTENDANCE OF ABSENT MEMBERS, IN SUCH MANNER, AND UNDER SUCH PENALTIES AS EACH HOUSE MAY PROVIDE.

No order of any court can give a senator or congressman the right to a seat if the House in which he claims membership decides against the validity of his election, or the accuracy of the returns, or the fullness of his qualifications. Each House is the final judge in all such matters.

The requirement of a majority sets the quorum rather high. In the English House of Commons, with more than six hundred members, an attendance of forty is sufficient. In the English House of Lords, with about seven hundred members, the quorum is fixed at three! As a matter of fact, both the Senate and the House often do business without a quorum being present. This is because no attention is paid to attendance unless some member raises the question of a quorum, in which case a count is made.

> EACH HOUSE MAY DETERMINE THE RULES OF ITS PROCEEDINGS, PUNISH ITS MEMBERS FOR DISORDERLY BEHAVIOR, AND, WITH THE CONCURRENCE OF TWO-THIRDS, EXPEL A MEMBER.

Both the Senate and the House of Representatives have the right to make their own rules of procedure, except that such rules must not infringe any provision of the national consti-

tution, — for example, the provisions as to keeping journals and recording votes. Both Houses have made their own rules and these rules differ in many details. The rules of the Senate allow the greater freedom of debate. In both Houses there is a provision that most of the rules may be suspended at any time by unanimous consent.

Either House may punish its own members for disorderly behavior, whether committed within the chamber or outside. It will be noted that the power to punish for disorderly behavior extends to members only, not to outsiders. On the other hand, each House has the right to proceed against outsiders for contempt, according to a procedure that is explained in the next paragraph. Either House may for any reason expel one of its own members by a two-thirds vote and expulsions have occasionally taken place. At the beginning of the Civil War all the senators from the Confederate states withdrew from the Senate and they were thereupon expelled en masse by the remaining members.

The right of both Houses to punish non-members for contempt is one that deserves a word of explanation. Congress is not a court, and the constitution does not give either House, in express terms, the right to conduct investigations, to summon witnesses, or to punish those who refuse to answer questions when hailed before its committees. Nevertheless, the right to conduct investigations has been held to be a prerogative of every legislative body, as an incident of its lawmaking function.

Accordingly, when proposals of legislation are being considered by the Senate or the House of Representatives, either body may undertake an investigation to find out whether such legislation is needed and what form it ought to take. In connection with this inquiry either House may summon witnesses and may take the testimony of such witnesses under oath. If any witness refuses to answer a proper question he

may be prosecuted for contempt under the provisions of a statute which Congress has enacted to cover such contingencies. This statute provides that when a witness is summoned to testify before a congressional committee and fails to do so, the President of the Senate or the Speaker of the House, as the case may be, shall certify the fact to the district attorney for the District of Columbia, whose duty it shall be to bring the matter before the grand jury for their action. The grand jury may then return an indictment for violation of the statute.

But neither House has a general power to order anyone's arrest and trial for contempt at its own discretion. It must give the offender his day in court. On one occasion the House of Representatives issued a warrant for the arrest of a federal officer in New York who was alleged to have made "defamatory and insulting statements" about congressmen in general. The Supreme Court promptly ruled that the House had no right to usurp a judicial function in this way.

> EACH HOUSE SHALL KEEP A JOURNAL OF ITS PROCEEDINGS, AND FROM TIME TO TIME PUBLISH THE SAME, EXCEPTING SUCH PARTS AS MAY IN THEIR JUDGMENT REQUIRE SECRECY; AND THE YEAS AND NAYS OF THE MEMBERS OF EITHER HOUSE ON ANY QUESTION SHALL, AT THE DESIRE OF ONE-FIFTH OF THOSE PRESENT, BE ENTERED ON THE JOURNAL.

Both Houses keep their own journals which contain the daily proceedings and constitute the minutes or official record of business. But in addition, every word that is uttered on the floor of either House (except in executive session) is taken down by stenographers and printed in the *Congressional Record*. Before such publication, however, the speeches and remarks of members are submitted to them in proof sheets for correction and the revisions made in this way are sometimes rather extensive.

The constitution does not prescribe the mode by which the passage of a bill in either House shall be authenticated, but the rules of Congress provide that when a bill has been duly passed by either House it shall be attested by the signature of the presiding officer of that House. This signature is conclusive evidence that the measure has been passed by a majority with a quorum present. The courts will not go behind the signature to inquire whether an actual majority was recorded or whether a quorum was in fact present when the measure went through.

> NEITHER HOUSE, DURING THE SESSION OF CONGRESS, SHALL, WITHOUT THE CONSENT OF THE OTHER, ADJOURN FOR MORE THAN THREE DAYS, NOR TO ANY OTHER PLACE THAN THAT IN WHICH THE TWO HOUSES SHALL BE SITTING.

It is the intent of the constitution that both Houses of Congress shall work together. This means that they must hold their sessions in the same place, namely, at the national capital, and under ordinary circumstances must sit concurrently. Neither one, therefore, may adjourn for more than three days without the consent of the other, nor under any circumstances may one House move its sessions to another city without taking the other House along. If the Senate and House fail to agree as to the time of adjournment, the President may intervene and settle the question as provided in Article II, Section 3 of the constitution. Either House may be called to Washington in special session without the other (see p. 91), in which case it may adjourn in its own time.

> *SECTION* 6. THE SENATORS AND REPRESENTATIVES SHALL RECEIVE A COMPENSATION FOR THEIR SERVICES, TO BE ASCERTAINED BY LAW, AND PAID OUT OF THE TREASURY OF THE UNITED STATES.

The matter of compensation, especially for senators, was considerably discussed in the Constitutional Convention. The first proposal was that each state should pay or not pay its senators as it saw fit. This was thought to be a logical arrangement, inasmuch as the senators were to represent the states, not the people. It was pointed out, however, that such an arrangement would result in the big states paying larger salaries than the smaller ones, with the result that unfortunate social distinctions would be created among members of the Senate. So it was finally agreed that Congress should be empowered to fix a uniform compensation by statute and that this compensation should be paid out of the national treasury in all cases. Congressional salaries are now fixed at $10,000 per annum, to which is added an allowance for secretarial and travelling expenses.

> THEY SHALL IN ALL CASES, EXCEPT TREASON, FELONY AND BREACH OF THE PEACE, BE PRIVILEGED FROM ARREST DURING THEIR ATTENDANCE AT THE SESSION OF THEIR RESPECTIVE HOUSES, AND IN GOING TO AND RETURNING FROM THE SAME; AND FOR ANY SPEECH OR DEBATE IN EITHER HOUSE, THEY SHALL NOT BE QUESTIONED IN ANY OTHER PLACE.

The privilege of immunity from arrest does not apply to criminal offences; that is, it does not preclude a member from being arrested after indictment for any indictable offence under authority of a state or federal court. On the other hand, it does protect both senators and representatives from arrest on civil process or even from having papers in civil suits served upon them. The same immunity extends to the delegates from Alaska, Hawaii, the Philippines and Porto Rico who are permitted to sit but not to vote in the House of Representatives.

The constitutional provision relating to freedom of speech is another one that harks back to certain episodes in English parliamentary history, especially to the notable case of John Wilkes who raised a considerable ruction in 1763 when he was arrested for libel although a member of the House of Commons. The immunity extends not only to words spoken in debate, but to written reports presented in either House by its committees, and to resolutions which may be offered in writing. No member of Congress can be prosecuted in any court, either federal or state, for what he may have said on the floor, or at a committee hearing, or in an official document, even when this document is circulated beyond the precincts of the capitol. On the other hand, this provision does not give a congressman any immunity from prosecution for what he may say outside the legislative chambers, hence the occasional practice of challenging a congressman to repeat some statement outside the shadow of his constitutional privilege.

> NO SENATOR OR REPRESENTATIVE SHALL, DURING THE TIME FOR WHICH HE WAS ELECTED, BE APPOINTED TO ANY CIVIL OFFICE UNDER THE AUTHORITY OF THE UNITED STATES, WHICH SHALL HAVE BEEN CREATED, OR THE EMOLUMENTS WHEREOF SHALL HAVE BEEN INCREASED DURING SUCH TIME; AND NO PERSON HOLDING ANY OFFICE UNDER THE UNITED STATES, SHALL BE A MEMBER OF EITHER HOUSE DURING HIS CONTINUANCE IN OFFICE.

Here again is one of the many echoes from the chronicles of parliament. When the kings of England desired to strengthen their hold on the House of Commons, it was their frequent practice to bribe members by appointing them to positions of trust or profit in the gift of the crown. Positions were sometimes created by the crown, in fact, for the sole purpose of placing members of the House of Commons in them. Having

thus accepted the royal favor, a member was not likely to oppose measures which the king desired.

The framers of the American constitution desired to establish a safeguard against any such procedure on the part of the President, so they stipulated that no member of Congress could hold any civil office which had been created during his term, and in effect that any member of Congress accepting an office should cease to be a member. In short, no one can be a member of either the Senate or the House and hold any executive or judicial post in the *national* government at the same time. But a senator or representative may resign and be appointed to an executive or judicial office, provided that such office was not created during the term for which he was elected, or was not increased in its emoluments during that time.

It should be noted that this constitutional prohibition does not prevent the holding of a *state* office by a member of Congress, and there have been such cases, although dual tenures are now prohibited by most of the state constitutions. Moreover, this paragraph does not forbid the occupancy of an executive and a judicial office at the same time, hence in the early days of the republic there were occasional instances in which the same person simultaneously held high office in both these departments. John Jay, for example, served simultaneously as a justice of the Supreme Court and as ambassador to France.

> *SECTION* 7. ALL BILLS FOR RAISING REVENUE SHALL ORIGINATE IN THE HOUSE OF REPRESENTATIVES; BUT THE SENATE MAY PROPOSE OR CONCUR WITH AMENDMENTS AS ON OTHER BILLS.

This section crystallizes into print a usage which had long existed in English government. But as a practical matter, it has never been of much importance in the United States be-

cause the Senate may virtually "originate" bills for raising revenue through its unlimited right to propose or concur with amendments. No bill for raising revenue can actually originate in the Senate, but when a measure comes up from the House, the Senate can strike out everything except the preamble and insert a wholly new bill. This it has frequently done. The term "bills for raising revenue," moreover, has been construed to mean measures which levy taxes in the strict sense of the word. The fact that some general measure contains a provision which incidentally would bring in revenue does not preclude its being originated in the Senate.

The constitution does not require that bills involving *expenditure* shall originate in the House of Representatives, but that has come to be the practice. Here again, however, the freedom with which the Senate can amend an appropriation bill has largely nullified any advantage which the House derives from its right to originate. In effect, therefore, the financial powers of the two chambers are the same, — which was clearly not intended by the framers of the constitution. They believed that the exclusive right of the House to originate bills for raising revenue would give it the "power of the purse" as Madison said, and the delegates from the larger states laid great stress upon it.

> EVERY BILL WHICH SHALL HAVE PASSED THE HOUSE OF REPRESENTATIVES AND THE SENATE, SHALL, BEFORE IT BECOMES A LAW, BE PRESENTED TO THE PRESIDENT OF THE UNITED STATES; IF HE APPROVE HE SHALL SIGN IT, BUT IF NOT HE SHALL RETURN IT, WITH HIS OBJECTIONS TO THAT HOUSE IN WHICH IT SHALL HAVE ORIGINATED, WHO SHALL ENTER THE OBJECTIONS AT LARGE ON THEIR JOURNAL, AND PROCEED TO RECONSIDER IT. IF AFTER SUCH RECONSIDERATION TWO-THIRDS OF THAT HOUSE SHALL AGREE TO PASS THE BILL,

IT SHALL BE SENT, TOGETHER WITH THE OBJECTIONS, TO THE OTHER HOUSE, BY WHICH IT SHALL LIKEWISE BE RECONSIDERED, AND IF APPROVED BY TWO-THIRDS OF THAT HOUSE, IT SHALL BECOME A LAW. BUT IN ALL SUCH CASES THE VOTES OF BOTH HOUSES SHALL BE DETERMINED BY YEAS AND NAYS, AND THE NAMES OF THE PERSONS VOTING FOR AND AGAINST THE BILL SHALL BE ENTERED ON THE JOURNAL OF EACH HOUSE RESPECTIVELY. IF ANY BILL SHALL NOT BE RETURNED BY THE PRESIDENT WITHIN TEN DAYS (SUNDAYS EXCEPTED) AFTER IT SHALL HAVE BEEN PRESENTED TO HIM, THE SAME SHALL BE A LAW, IN LIKE MANNER AS IF HE HAD SIGNED IT, UNLESS THE CONGRESS BY THEIR ADJOURNMENT PREVENT ITS RETURN, IN WHICH CASE IT SHALL NOT BE A LAW.

This is the constitutional provision for what is known as the qualified veto of the President. The framers of the constitution were not prepared to give the President an absolute veto such as the governors had possessed in colonial days. On the other hand, they did not think it proper that laws should be made in utter defiance of the President's rights or wishes. So they devised the qualified veto as a compromise between an absolute negative and no veto at all. It is part of the system of checks and balances.

If you read carefully the foregoing clause of the constitution, you will see that when measures reach the President after being passed by both Houses, any one of four things may happen. *First*, he may approve the bill and sign it, — which is what he does in the great majority of cases. *Second*, if he does not approve the bill, he may within ten days return it without his signature to that branch of Congress in which it originated. The ten days do not include Sundays, nor does the time begin to run until the bill actually reaches the Presi-

dent. When President Wilson was in France during the peace negotiations, most bills did not reach him for more than ten days after they had been passed.

The constitution requires that when a President returns a bill without his signature, he shall state his objections; but these objections need not be given in detail. The President may merely say, if he chooses, that the bill is inexpedient, or undesirable, or unwise. When the vetoed measure comes back to Congress, it is again voted on, and this vote must be taken by recording the Yeas and Nays in both Houses. If it is adopted in each House by a two-thirds vote of the members present the bill becomes a law notwithstanding the absence of the President's signature. To use the common expression, his veto is overridden. Measures are not infrequently passed over the presidential veto; a notable instance was the Volstead Act in President Wilson's administration.

There is a *third* alternative. The President may neither sign the bill nor return it to the House in which it originated, but may let it lie on his desk until the ten-day limit has expired. In that event the bill becomes a law without his signature, unless Congress has meanwhile adjourned. But if Congress has adjourned (and this is the *fourth* eventuality), it does not become a law. This last-named method of keeping a bill from going on the statute-book is popularly known as the pocket veto. Many measures meet this untimely fate because Congress often puts through and sends to the President a large grist of bills during the last few days of each session.

There are some measures to which the veto power of the President does not apply. Proposals to amend the constitution, when passed by a two-thirds vote of Congress, do not require the President's signature and hence cannot be vetoed by him. The same is true of "concurrent resolutions" which both Houses of Congress adopt from time to time and which are merely expressions of congressional opinion, not having

the force of law. On the other hand, "joint resolutions" which do have the force of law, must be submitted to the President and may be vetoed by him.

It should also be mentioned that the President must sign or veto a bill as a whole; he is not permitted to veto certain sections and let the rest go through. This is a limitation of great importance in the case of appropriation bills. There are times when the President would very much like to strike out certain items in an appropriation bill, but he has no such right; he must either veto the measure as a whole or take the chaff with the wheat. This situation is regrettable, especially since many of the state constitutions give the governor the right to veto any portion of a measure without rejecting the whole.

> EVERY ORDER, RESOLUTION, OR VOTE TO WHICH THE CONCURRENCE OF THE SENATE AND HOUSE OF REPRESENTATIVES MAY BE NECESSARY (EXCEPT ON A QUESTION OF ADJOURNMENT) SHALL BE PRESENTED TO THE PRESIDENT OF THE UNITED STATES; AND BEFORE THE SAME SHALL TAKE EFFECT, SHALL BE APPROVED BY HIM, OR, BEING DISAPPROVED BY HIM, SHALL BE REPASSED BY TWO-THIRDS OF THE SENATE AND HOUSE OF REPRESENTATIVES, ACCORDING TO THE RULES AND LIMITATIONS PRESCRIBED IN THE CASE OF A BILL.

This provision was intended to prevent Congress from circumventing the President's veto power by the device of calling its bills by some other name, such as orders, resolutions, or votes.

> *SECTION* 8. THE CONGRESS SHALL HAVE POWER TO LAY AND COLLECT TAXES, DUTIES, IMPOSTS AND EXCISES, TO PAY THE DEBTS AND PROVIDE FOR THE COMMON DEFENCE AND GENERAL WELFARE OF THE UNITED STATES;

This section is perhaps the most important of all the individual sections contained in the constitution. For Section 8 of Article I enumerates the eighteen powers of Congress and without these powers the national government would never have been able to function.

First among these enumerated powers is the power to tax. Quite appropriately this power heads the list, for the power to tax is the most far-reaching power that any government can possess. Having unlimited taxing authority, a government would need nothing else to make itself supreme.

But the taxing power that is given to the government of the United States in this paragraph is by no means an unlimited power. On the contrary it is limited in various directions — as to the purposes for which taxes may be levied, as to the things which may be taxed, and as to the way in which taxes may be imposed.

The first of these limitations relates to the purpose for which taxes may be levied. There are three allowable purposes; namely, to pay the debts, to provide for the common defence, and to promote the general welfare of the United States. Congress is not permitted to levy taxes for any purpose other than these three. But as a practical matter this limitation is not a very hampering one because the words "promote the general welfare" are so broad in their scope that they permit the levying of taxes for virtually anything the national government desires to do.

Nevertheless various Presidents have vetoed measures passed by Congress on the ground that it was unconstitutional to spend for some local purpose money that had been raised by taxation to promote the general welfare. Andrew Jackson, for example, vetoed every bill for public improvements that came before him, unless he could be convinced that the proposed improvement would be of benefit to the whole country and not merely to a portion of it.

BUT ALL DUTIES, IMPOSTS AND EXCISES SHALL BE UNIFORM THROUGHOUT THE UNITED STATES;

Here is the second limitation. Congress may not levy any tax to be collected at one rate in one part of the country and at a different rate in other parts. The rate and the method of assessment must be uniform on a nation-wide scale. This does not mean, of course, that every part of the country must contribute an exactly proportionate share of the tax. In fact it happens in the case of certain taxes that ninety per cent of the proceeds come from a single state or city. For example, the head tax on immigrants falls almost wholly on the port of New York, yet this tax satisfies the requirement of uniformity because it is imposed on immigrants no matter where they enter the country.

Mention should also be made of two additional limitations which are imposed by other provisions of the constitution on the exercise of the taxing power by Congress; namely, the provision that no tax may be levied on the exports from any state (Art. I, Sec. 9, par. 5), and the stipulation that direct taxes, in case they are imposed, must be apportioned among the states in accordance with their respective population (Art. I, Sec. 2, par. 3).

These express limitations on federal taxing power may therefore be summarized as follows: Taxes must be for a general purpose, must be uniform throughout the United States, must not be laid on exports, and in the case of direct taxes (with the exception of income taxes) must be apportioned among the states according to population. In addition there is the implied limitation that federal taxes must not be levied upon the instrumentalities of state or local government, including the salaries of state and local officers.

TO BORROW MONEY ON THE CREDIT OF THE UNITED STATES;

This is one of the few powers on which the constitution places no limits whatsoever. Congress can borrow as much as it pleases, and when and as it pleases. The national government has used this power on many occasions and in a great variety of ways. It has borrowed by the issue of bonds, certificates of indebtedness, treasury notes, and by the issue of paper money. The national debt, at its highest point, amounted to about twenty-seven billion dollars.

The constitution gives Congress no express power to charter banks, but this power has been held to be implied in the express authority to borrow money; and the entire system of national banks, as well as the federal reserve bank system, has been established and maintained by Congress under its implied powers. In the famous case of McCulloch *v.* Maryland (1819), the Supreme Court held that the establishment of a bank was a reasonable and proper method of providing for the exercise of the borrowing power, inasmuch as banks are agencies of borrowing and are so used by individuals.

Hence the National Banking Act of 1863 was passed with the main purpose of enabling the United States to sell its bonds at a critical period of the Civil War. During the World War, again, a large part of the government's financing was handled by the federal reserve banks.

The right to charter and regulate banks is also implied in the national government's express power "to raise and collect taxes." Some years ago Congress passed a law creating a federal land bank system, chiefly for the purpose of providing capital for agricultural development, but incidentally to create additional depositaries for the public funds. The Supreme Court held, in 1921, that this action was within the authority of Congress. Having the right to levy and collect taxes the national government has by implication the right to establish and maintain convenient depositaries for keeping this revenue until it is needed.

All this affords an excellent illustration of the way in which the words of the constitution have been expanded by judicial decision. Strictly speaking, the national government has no powers except those which the constitution gives to it; but every power that is expressly granted carries with it certain implied powers, and the Supreme Court has been liberal in widening these implied powers. Thus an "unwritten constitution" has grown up around the words of the original document.

TO REGULATE COMMERCE WITH FOREIGN NATIONS, AND AMONG THE SEVERAL STATES, AND WITH THE INDIAN TRIBES;

This clause of the constitution is of great importance. No one in the Constitutional Convention of 1787 could have had the remotest idea of the vast amount of authority which lay concealed within these three words, "to regulate commerce." Here, again, one encounters an impressive example of constitutional flexibility. For these words were placed in the constitution at a time when commerce meant the carrying of goods by stage coaches, pack wagons, and sailing vessels; when there were no steamships, railroads, motor trucks and busses, telegraphs, telephones, pipe lines, power lines, airplanes, or radio broadcasting stations. Nevertheless the word "commerce" has been gradually stretched to cover all these agencies of transportation and communication. The Supreme Court has ruled, in one decision after another, that commerce embraces navigation, communication, traffic, the carrying of passengers, the transmission of messages by telegraph, by telephone, or radio; likewise the transmission of electric power by high tension lines, and the transportation of oil through pipe lines. All these things are instrumentalities of commerce and hence come under the regulating power of Congress whenever they cross the boundaries of a state.

But constitutional flexibility has its limits. The word commerce cannot be expanded indefinitely. The Supreme Court has held, for example, that commerce does not include the buying and selling of bills of exchange, the writing of insurance policies, the processes of manufacturing or the seasonal migration of birds in different states. In its Child Labor decision of 1918, the Court ruled that Congress could not, under color of regulating interstate commerce, dictate the conditions under which manufacturing might be carried on within any state of the Union, even though the manufactured goods were intended to be sold in other states. The determination of who may be employed in industry, within the bounds of a state, rests with the state legislatures.

It will be noted that the regulating power of Congress, in any event, extends only to commerce which passes beyond the boundaries of the nation or of a single state. Congress is expressly given the right to regulate trade with foreign nations and it has done so by means of its tariff and immigration laws. It has also the right to regulate commerce with the Indian tribes, and although this was a power of some importance when the constitution was framed it is no longer of much consequence. On the other hand commerce among the several states was of relatively small proportions in 1787, but it has become of vast importance during the past fifty years. Today more commerce is carried on among the forty-eight states of the American Union than among all the nations of the earth put together. Hence the right of Congress to regulate this interstate commerce has developed into a power of tremendous consequence.

Be it noted, moreover, that interstate commerce is under the control of Congress not merely while it is passing across a state boundary but all the way from its start to its destination. A shipment of goods from San Francisco to Los Angeles is wholly under the jurisdiction of California; but a shipment

from Boston to Providence is under the jurisdiction of the United States. Regulation of interstate commerce takes the form of fixing rates, prescribing conditions of service, requiring reports from carriers, and generally exercising supervision in the public interest. This regulatory work is actually performed, under the authority of Congress, by various administrative bodies, including the Interstate Commerce Commission, the Federal Trade Commission, and the Federal Radio Commission.

While it is approximately correct to say that Congress has nothing to do with trade or transportation so long as these are confined within the borders of a single state, such a statement might be misleading unless accompanied by a word of explanation. The Supreme Court has held that the national government, through the Interstate Commerce Commission, can regulate the rates on railroads between two points lying within a single state if such action becomes necessary to a proper fixing of through rates, applying between points in different states.

TO ESTABLISH AN UNIFORM RULE OF NATURALIZATION,

In the Declaration of Independence, a complaint was made that George III had obstructed "the laws for the naturalization of foreigners." One of the first actions of the Continental Congress after the signing of the Declaration, therefore, was to provide by resolution that all persons "abiding in any of the United Colonies" should be members of such colonies; in other words, citizens. Later, the Articles of Confederation contained a provision that "the free inhabitants of each of these states" should be entitled to all the privileges and immunities of free citizens in the several states. This left each state free to naturalize citizens on whatever basis it might deem best. That plan did not work very well, hence the

framers of the national constitution stipulated that a uniform system of naturalization might be provided by federal law.

Citizenship is acquired in two ways; by birth and by naturalization. The Fourteenth Amendment provides that all persons born in the United States, and subject to its jurisdiction, shall be citizens, even though born of foreign parents. Persons of foreign birth become citizens by being naturalized. This naturalization, however, may be either collective or individual. Collective naturalization is the term applied to cases where whole bodies of population are admitted to citizenship at one stroke, as for example when territory is annexed to the United States. This was done when Texas became part of the United States in 1845. Likewise the Act of Congress which established a civil government in Hawaii (1900) conferred American citizenship on all those who had been citizens of the Hawaiian Republic.

But the mere acquisition of new territory by the United States does not of itself confer American citizenship on the inhabitants. There must be a specific provision to this effect in the treaty of annexation or in an act or joint resolution of Congress. The treaty with Spain in 1898 contained no such provision, hence the Filipinos are not citizens of the United States. They are called "nationals" of the United States, that is, persons entitled to American protection but not citizens of full rank, entitled to all the privileges of citizenship. Porto Ricans, however, have been invested with full American citizenship by an Act of Congress.

Individual naturalization is regulated by the provisions of the Naturalization Act of 1906. The procedure is in the hands of the courts under the general supervision of a Bureau of Naturalization which is within the federal Department of Labor. Under the provisions of this act there are three steps in naturalization procedure. The first is a formal "declaration of intention" to become a citizen. This formal declaration

may be made by any alien who, being able to speak the English language, is "a white person, or of African nativity, or of African descent." It will be noted that this wording excludes both Chinese and Japanese immigrants; but children of Chinese and Japanese parents born within the United States are American citizens by birth and do not need to be naturalized. This last statement deserves special emphasis because there is a widespread impression that Chinese and Japanese cannot become citizens under any circumstances. They cannot be naturalized, it is true; but most of them do not need to be. The Fourteenth Amendment means what it says.

A declaration of intention on the part of one who is eligible to naturalization may not be filed until the alien has reached the age of eighteen years. Not less than two or more than seven years after filing this declaration of intention, he (or she) may take the second step, if there has been continuous residence in the United States for not less than five years. This second step involves a formal petition for citizenship. Such petition is presented to a federal court and must lie on file for at least ninety days, during which an investigation of the petitioner's claim is made by an agent of the Bureau of Naturalization employed for this purpose. After the investigation has been completed, the alien must appear in person before the court, accompanied by two witnesses, both citizens of the United States, and must answer such questions as may be put to him by the naturalization agent or by the presiding judge. These questions relate to his record in law observance, his knowledge of American government, his views on social and political organization (to find out if he is a disbeliever in organized government), and his readiness to perform the obligations of citizenship. If the court is satisfied, it issues the final papers or letters of citizenship. Certain fees are charged for these papers.

The naturalization of a father naturalizes all his children

under twenty-one years of age, but not those who have passed that point. Until 1921, it was the rule that the naturalization of a husband made his wife an American citizen also, and that a foreign-born woman became invested with American citizenship by marrying an American. On the other hand an American-born woman who married a foreigner lost her American citizenship. But the Rogers Act made a change in these rules, and since 1921 neither the naturalization of a husband nor a marriage between citizen and alien necessarily changes a woman's citizenship. When a woman of foreign citizenship marries an American she remains an alien until she becomes naturalized by the regular procedure. When an American woman marries a foreigner she may remain an American citizen under certain conditions. This change in the rules has caused much confusion because other countries continue the old legal doctrine.

AND UNIFORM LAWS ON THE SUBJECT OF BANKRUPTCIES THROUGHOUT THE UNITED STATES;

Bankruptcy laws are laws which provide for the distribution of a debtor's assets among his creditors after he becomes insolvent. The rules relating to bankruptcy have been made uniform by the National Bankruptcy Act of 1898; but by this legislation Congress has not assumed exclusive jurisdiction in the matter. The several states are permitted to have their own bankruptcy laws, but where any state law conflicts with the provisions of the National Bankruptcy Act, it is to that extent invalid.

There are two kinds of bankruptcy, voluntary and involuntary. In the former case, the debtor himself files a petition in a federal district court, and officials known as receivers in bankruptcy are appointed by the court to take over his business. In the case of involuntary bankruptcy, the petition is presented by one or more of the creditors. After the assets

of a bankrupt individual or corporation have been distributed, a discharge from bankruptcy may be issued by the court and relieves a bankrupt from all further liability with respect to debts unpaid at the time of such discharge.

One may ask why Congress should have been given power over bankruptcy proceedings and not over other matters of civil procedure such as the collection of ordinary debts. The answer is that without uniform rules relating to bankruptcy, there would be much confusion in interstate trade. Sellers in one state would hesitate to give goods on credit to buyers in another state if there were a possibility that because of favoritism to local debtors under local bankruptcy laws the account could not be collected.

TO COIN MONEY, REGULATE THE VALUE THEREOF, AND OF FOREIGN COIN,

Until 1793 there was no national coinage in the United States. Prior to the War of Independence, English currency was used, and after 1776 many French and Spanish coins of various denominations drifted into the country. Gradually the Spanish silver dollar replaced the English shilling as the recognized unit of value and as the most common medium of exchange; but this dollar did not have a uniform value in all parts of the country and the framers of the constitution were anxious to remove the serious obstacle which this variation placed in the way of commercial development. Congress was therefore given power to coin money, and to prevent confusion this power was made exclusive by prohibiting the states from exercising it. No state can coin money or issue bills of credit.

The new national government established a mint at Philadelphia, and other mints have subsequently been located at Denver, San Francisco, and New Orleans. The decimal system of currency was also agreed upon in 1794, — with dollars, dimes, and cents. The ratio of gold to silver was

fixed at fifteen to one; that is to say the weight of the silver dollar was to be fifteen times that of the gold dollar. This ratio continued until 1834 when it was fixed at sixteen to one. In 1873 the coinage laws were revised and the minting of silver dollars was discontinued. Gold now became the single standard of values, but opposition immediately arose and during the last quarter of the nineteenth century, there was a vigorous movement for the free and unlimited coinage of silver dollars at a ratio of sixteen to one. The presidential election of 1896 was fought on this issue; but the free silver cause was heavily defeated and the whole matter was definitely closed by the Gold Standard Act of 1900 which designated the gold dollar as the exclusive legal standard of values for the United States.

Nothing is said in the constitution with reference to the right of the national government to issue paper money. The various states are forbidden to "emit bills of credit" or to make anything but gold and silver coin a legal tender in payment of debts. Inasmuch as Congress was not forbidden to issue paper money it proceeded in due course to exercise that power and its right to do so was upheld by the Supreme Court as an incident of the power "to borrow money on the credit of the United States." The court also ruled that Congress may make such notes legal tender in payment of debts.

The entire currency of the United States, accordingly, is under federal control. It includes gold coin, silver dollars, and fractional coins (half dollars, quarters, dimes, nickels, and cents), gold certificates issued against deposits of gold bullion held in the federal treasury, silver certificates backed by silver bullion and silver coin similarly held, United States notes or greenbacks, and treasury notes, both of which are redeemable in gold coin, national bank notes which are protected by deposits of government bonds made by the banks, federal reserve notes issued against the security of commercial paper, and

federal reserve bank notes secured by government bonds which are gradually replacing the national bank notes. There are no state notes or state bank notes, yet no other country has such a variety of currency as circulates in America. But so long as every paper dollar, of whatever type, stays worth its face value in gold, the diversity does not cause any inconvenience.

AND FIX THE STANDARDS OF WEIGHTS AND MEASURES;

For obvious reasons, this is an exclusive power. To have different standards would hamper trade among the states. There is a great advantage in having a pound, a yard, a gallon mean the same thing in all parts of the country. Still it was not until 1901 that Congress undertook to deal with the matter of uniform standards in a comprehensive and scientific way. In that year it established the Bureau of Standards in Washington, and this bureau now supplies the various states with measures of mathematical exactness. These exact standards are especially needed in the technical trades — in the electrical industry for example. The inspection of weights and measures, as to their conformity with these standards, is in the hands of the state and municipal authorities.

TO PROVIDE FOR THE PUNISHMENT OF COUNTERFEITING THE SECURITIES AND CURRENT COIN OF THE UNITED STATES;

This is not an exclusive power; the state laws may also provide for the punishment of counterfeiters and many of them do so. In many states it is an offence not only to make counterfeit coins or paper money, but to be found in possession of it, or knowingly to pass counterfeit money into circulation.

TO ESTABLISH POST OFFICES AND POST ROADS;

The postal system of the country is older than the federal government itself, extending back into colonial times. In

the interval between the outbreak of the Revolution and the adoption of the constitution, a postal service was managed by the Continental Congress and later by the Congress of the Confederation. The Articles of Confederation made provision for "establishing and regulating post offices from one state to another throughout all the United States," and the framers of the constitution merely sought to perpetuate in the hands of the central government a power which was already there, and which in its actual workings was well understood by everybody.

But by the wording which they adopted in the new constitution, they went a good deal further. They gave Congress the power to establish and maintain "post roads," as well as post offices. And what is a post road? In 1787 it meant a road for the carrying of mail on horseback or by stage coach. But mails are now carried for the most part by railroads and by airplane. May Congress, then, in the exercise of its power to establish post roads, build and operate a railway, provide landing-fields for mail planes, establish airports in harbors for seaplanes arriving from ocean vessels, and so on? Without much question Congress has these rights. To facilitate the safe and expeditious transportation of the mails it may do whatever needs to be done.

The postal power of Congress is more extensive than most people realize. By virtue of it the people of the United States conduct the largest single business enterprise in the world. This includes not only the transmission of mail, but the whole parcels post system, the money order service, and a great postal savings bank. Over this far-reaching mechanism of communication, transportation, and banking (all included within the postal service) the national government has full control. The Supreme Court has ruled that the postal authorities may exclude from the mails any matter that is objectionable. Congress may delegate to the Postmaster General

the right to determine what matter shall be so excluded and his decision is not subject to review by the courts.

> TO PROMOTE THE PROGRESS OF SCIENCE AND USEFUL ARTS, BY SECURING FOR LIMITED TIMES TO AUTHORS AND INVENTORS THE EXCLUSIVE RIGHT TO THEIR RESPECTIVE WRITINGS AND DISCOVERIES;

Prior to the adoption of the national constitution, some copyrights had been granted by the individual states, through special acts of the state legislature. The Articles of Confederation contained no mention of patents and copyrights, nor was this matter mentioned in the first draft of the constitution. But James Madison thought of it before the sessions came to an end and this provision was inserted in the final draft. The country is indebted to Madison for his shrewd foresight in this, as in many other things. Had the matter been entirely overlooked we would probably have had to endure a chaotic condition of affairs insofar as patents and copyrights are concerned. It would be necessary for an inventor or an author to secure protection in each and all of the forty-eight states.

A patent is a certificate given to an inventor securing during a designated term of years the exclusive right to such profits as there may be in his invention. Patents are issued by the Patent Office in the Department of the Interior. It was established in 1836 and has issued more than 1,500,000 patents in all. A patent is valid for seventeen years. Trade-marks for use in interstate commerce may be registered in the Patent Office and give the same protection as a patent. A copyright secures exclusive privilege to publish and sell any book, manuscript, musical composition, drawing, photograph, or similar matter having inherent value. Copyrights are granted by the Library of Congress. The present term of a copyright is twenty-eight years, with the opportunity of renewal for a similar term.

TO CONSTITUTE TRIBUNALS INFERIOR TO THE SUPREME COURT:

The Supreme Court is the only federal court which the constitution expressly requires. The other federal courts were left to be organized at the discretion of Congress under the general provisions relating to the tenure of judges. Some of those who framed the national constitution, including James Madison, believed that it would be competent for Congress to use the various state courts as inferior federal courts. This is the practice which has been pursued in some other federal countries, notably in the German Reich; but Congress did not choose to do things in that way. It preferred an arrangement by which the federal government should have its own system of courts from top to bottom. In due course, therefore, it established a hierarchy of district courts and circuit courts of appeals, likewise various special courts such as the court of claims, court of customs appeals, the courts of the territories and insular possessions, including courts for the District of Columbia.

The judges of all the federal courts from lowest to highest are appointed by the President with the consent of the Senate and are irremovable except by impeachment. Court officials, such as district attorneys, marshals, and commissioners are similarly appointed, but for a term of years and may be removed by the President (without the consent of the Senate) at any time. Most of the states elect their judges, but no federal judge or federal court officer has ever been chosen in that way.

TO DEFINE AND PUNISH PIRACIES AND FELONIES COMMITTED ON THE HIGH SEAS, AND OFFENCES AGAINST THE LAW OF NATIONS;

This is an improvement upon a provision in the Articles of Confederation which gave to Congress authority to establish courts "for the trial of piracies and felonies committed on the

high seas." The high seas are the waters outside what is commonly known as the three mile limit, or, more accurately, outside the distance of one marine league from low water mark. In international law, the jurisdiction of a country extends to this distance from the shore; beyond this limit, the salt waters of the earth are known as the high seas, and no country exercises exclusive jurisdiction over them. By treaty, however, the United States has obtained the right to search the vessels of certain foreign countries beyond the three mile limit and to seize them if there is sufficient evidence of intent to violate the prohibition laws.

A pirate has always been regarded as an enemy of mankind and governments have assumed the right to punish him wherever he may be found. Piracy is customarily defined as the offence of committing depredations at sea without color of authority derived from any recognized government. It was common in the eighteenth century but has now been relegated to the realm of sea fiction. Felonies committed on American vessels within the three mile limit are under the jurisdiction of the state concerned; when committed outside the three mile limit, they come within the purview of the national government.

Offences against the law of nations, — in other words against the rules of international law, are for the most part breaches of neutrality. International law requires the citizens of a neutral country to refrain from aiding either of the belligerents. In keeping with this requirement, Congress has provided by statute that American territory must not be used as a basis for unneutral acts, such as the organization of filibustering expeditions against any country with which the United States is not at war. This statute has frequently been enforced against persons who have tried to use American territory as a base for assisting various revolutions in Latin-American countries.

TO DECLARE WAR,

Congress alone can declare war, but this does not mean that Congress alone can make war. A formal declaration is not essential to the beginning of hostilities. War can be begun without a formal declaration and many wars have been begun in that way. No rule of international law requires a declaration of war before the first blow is struck. Declarations of war are not issued for the benefit of a country's opponents but for the information of neutrals, that they may observe the rules of neutrality and keep out of the way. As a matter of usage, the President of the United States takes the first step leading to a declaration of war. He sends a message to Congress advising the issue of such a declaration. A joint resolution is then introduced, put through its various stages, and passed. After its passage, it is signed by the President. The United States entered the World War by that procedure.

Here is the joint resolution as passed by Congress and signed by the President:

"Whereas the imperial German government has committed repeated acts of war against the government and the people of the United States of America; therefore be it RESOLVED by the Senate and House of Representatives of the United States in Congress assembled that the state of war between the United States and the imperial German government which has thus been thrust upon the United States, is hereby formally declared; and that the President be and he is hereby authorized and directed to employ the entire military and naval forces of the United States and the resources of the government to carry on war against the imperial German government; and to bring the conflict to a successful termination, all the resources of the country are hereby pledged by the Congress of the United States."

The power to declare war carries with it the authority to deal with problems which may arise in connection with the war and at its close; but the acquisition of territory may be accomplished through the treaty-making power only. The President of the United States, as commander-in-chief of the

military forces, has no right to enlarge the boundaries of the nation by taking, on his own responsibility, the fruits of victory.

GRANT LETTERS OF MARQUE AND REPRISAL, AND MAKE RULES CONCERNING CAPTURES ON LAND AND WATER;

Letters of marque were authorizations granted by a government to privateers or private war vessels giving them the right to prey upon the commerce of the other belligerent. They are now a thing of the past. Letters of marque have not been granted by the United States since the Civil War and in all probability will never again be issued. It will be noted that this power to grant letters of marque and reprisal is forbidden to the states.

In time of war, international law permits the capture of enemy vessels, not only war craft but private merchantmen. These captured merchantmen are brought into port as prizes. A special court, known as a prize court, thereupon determines what disposition shall be made of the capture. The prize may include not only the vessel itself but under certain conditions the cargo as well, particularly if this cargo consists of contraband of war, that is, munitions and other military or naval materials.

TO RAISE AND SUPPORT ARMIES,

This clause is of the utmost consequence in wartime. The authority to raise and support armies gives to Congress a practically unlimited range of authority over every branch of national life while the war continues and until a treaty of peace is signed. When an army is in the field, every branch of commerce and industry may be placed under any restraint to facilitate its support. This became apparent during the World War when Congress authorized the President to estab-

lish food and fuel administrations with power to regulate supply and to control consumption. The national government, for a time, also ordered the shutting down of all industries on Mondays of each week in order that the fuel supply might be conserved. The taking over of the railroads likewise came within the power "to support armies." The fixing of prices was also held constitutional under the same constitutional provision. In a word, so long as the nation is at war there appears to be little, if anything, in the way of regulation that Congress cannot do. Modern war is not fought between armies but between whole peoples. The last ounce of national energy may be essential to the winning of a great war. If so, the nation can call for it.

BUT NO APPROPRIATION OF MONEY TO THAT USE SHALL BE FOR A LONGER TERM THAN TWO YEARS;

The framers of the constitution were afraid of standing armies. They knew the difficulties which had arisen in England from time to time through the attempt of the Stuart kings to maintain a regular army without the consent of parliament. Hence their express stipulation that no grant of money for the maintenance of an army in the United States shall be made for a longer term than two years. At least once in every two years, therefore, Congress must consider anew whether there is need for keeping an army in existence and must determine by an affirmative vote the size of the military establishment.

TO PROVIDE AND MAINTAIN A NAVY;

On the other hand, the framers of the constitution were not in the least afraid of navies. Here, again, they showed familiarity with the vicissitudes of English history. They knew that naval forces had never constituted a threat to the

liberties of the English people, and this suggested to them that no limitations needed to be placed upon the length of time for which naval appropriations might be made in the United States. It is almost essential in the nature of things, moreover, that naval appropriations shall be made in accordance with a program which is spread over a number of years.

TO MAKE RULES FOR THE GOVERNMENT AND REGULATION OF THE LAND AND NAVAL FORCES:

The President is commander-in-chief of both army and navy, but the rules for the administration of both these establishments are made by Congress. Congress fixes the size of both the army and the navy, determines the rules of promotion and discipline, and of course provides all the money. In making appropriations it can fix the conditions under which the money shall be spent. Subject to such limitations, however, the expenditure of the appropriations is under the control of the President. He is not under obligation to spend all the money, or any of it, if in his judgment the expenditure has become unnecessary. But he cannot spend it for any other purpose than that for which it was appropriated.

The general rules for the government of the land forces of the United States are contained in the Articles of War. The navy also has its general code of regulations enacted by Congress. The marine corps is part of the naval forces. The air service is attached in part to the army and in part to the navy. These codes of rules make up a branch of jurisprudence known as military law, which is administered by courts martial. Military law should be distinguished from martial law. The former applies only to persons who are in the military or naval service, while the latter applies also to civilians within the district over which martial law is proclaimed.

When martial law is proclaimed, the ordinary laws and

courts are no longer in force; they are supplanted by such regulations as the military authorities may issue and apply. Martial law may be established in any part of the country at any time by Congress, or by the President as commander-in-chief if Congress is not in session. Within a single state it may be proclaimed by the governor under such regulations as the state legislature has established. The establishment of martial law is not confined to wartime; it may be proclaimed in case of riots or other grave disorders involving the use of troops in aid of the police.

TO PROVIDE FOR CALLING FORTH THE MILITIA TO EXECUTE THE LAWS OF THE UNION, SUPPRESS INSURRECTIONS AND REPEL INVASIONS;

The Revolutionary War was fought and won by militiamen. It had to be, for there was no regular army under the control of the colonies. When the colonies became states they continued their militia organizations, and the framers of the constitution were anxious that a citizen soldiery should be fostered and encouraged. They believed, as one of their number said, that a well-organized militia was "the only substitute that could be devised for a standing army, and the best possible security against it."

The constitution accordingly took for granted that each state would maintain its own militia or national guard. In time of peace this militia is under the control of the governor, as commander-in-chief of the state forces; but the national government may call out the state militia for three purposes: first, to execute the laws of the Union; second, to put down disorder; and third, to repel invasion by the forces of a foreign country. It was clearly intended, therefore, that the state militia, as such, would not be used outside the United States.

But Congress has found a way of making use of the state militia even in foreign wars. The National Defence Act of

1916 provides that the President may "draft into the military service of the United States" any or all members of the state militia whenever Congress authorizes the use of armed forces in excess of the regular army. In other words, the militia of the states may be "federalized" by the President whenever they are needed to supplement the regular army of the United States. When a militia unit is drafted into the national service it passes from state to federal control. Its members cease to be militiamen and become federal troops. They can then be sent anywhere. In accordance with this provision of the National Defence Act, a federalizing of the state militia took place when the United States entered the World War, and various national guard divisions were sent to France.

> TO PROVIDE FOR ORGANIZING, ARMING, AND DISCIPLINING THE MILITIA, AND FOR GOVERNING SUCH PART OF THEM AS MAY BE EMPLOYED IN THE SERVICE OF THE UNITED STATES, RESERVING TO THE STATES RESPECTIVELY, THE APPOINTMENT OF THE OFFICERS, AND THE AUTHORITY OF TRAINING THE MILITIA ACCORDING TO THE DISCIPLINE PRESCRIBED BY CONGRESS;

In time of peace the militia of the states are under a divided control. The constitution provides that Congress shall have charge of its "organizing, arming and disciplining" at all times, but that the appointment of officers and the actual training shall be in the hands of the states. The manner of training, however, may be prescribed by Congress. This division of authority does not make for an efficient militia system, but the reason for it can be found in the local patriotism which existed at the time the constitution was framed. The states were jealous of their military privileges and would not have tolerated a complete transfer of militia control to the national government.

TO EXERCISE EXCLUSIVE LEGISLATION IN ALL CASES WHATSOEVER, OVER SUCH DISTRICT (NOT EXCEEDING TEN MILES SQUARE) AS MAY, BY CESSION OF PARTICULAR STATES, AND THE ACCEPTANCE OF CONGRESS, BECOME THE SEAT OF GOVERNMENT OF THE UNITED STATES,

The question of a national capital gave the Convention of 1787 some embarrassment. Several cities coveted this honor, notably Richmond, Philadelphia, New York, and Boston. The framers of the constitution did not venture to make a decision among them, lest such action should promote sectional antagonism. They referred the choice to Congress for future settlement. It was felt, however, that Congress might wish to establish an entirely new city as the seat of the national government, in which case it seemed desirable that the new city should be absolutely under national control. Hence this provision for a federal district outside the jurisdiction of any state.

Immediately after the constitution had gone into force, the state of Maryland ceded to the national government a tract of territory on one side of the Potomac, while the state of Virginia gave a somewhat larger area on the other shore. Later on, the tract ceded by Virginia was returned to her. The remaining area was designated as the District of Columbia. Officially, there is no City of Washington. The only local government there is the government of the District of Columbia. It has no mayor, aldermen, councillors, or city manager, but is governed by a board of District Commissioners, three in number, who are appointed by the President of the United States. All legislation for the District is enacted by Congress. The national government pays approximately one-half the cost of local government in the District.

So residents of the District of Columbia are completely disfranchised. Since the District has no senators or represen-

tatives in Congress it has no presidential electors assigned to it; likewise it has neither governor nor legislature. Consequently residents of the District never vote at any election. They pay income taxes, inheritance taxes, and taxes on their real estate, but are not represented in any governing body, whether national, state, or municipal. If this is not a case of taxation without representation, it would be hard to find one.

> AND TO EXERCISE LIKE AUTHORITY OVER ALL PLACES PURCHASED BY THE CONSENT OF THE LEGISLATURE OF THE STATE IN WHICH THE SAME SHALL BE, FOR THE ERECTION OF FORTS, MAGAZINES, ARSENALS, DOCK-YARDS, AND OTHER NEEDFUL BUILDINGS;—

In various parts of the country the national government has acquired land for the construction of forts, cantonments, navy yards, lighthouses, dry-docks, post offices, custom houses, and other federal buildings. Over such property Congress exercises "exclusive legislation in all cases whatsoever." The legislative authority of the state in which the lands or buildings are located does not extend to this property of the national government. Such property is not subject to taxation by the states, nor may the states impose upon it any restrictions which are inconsistent with the proper fulfillment of the national government's purposes. It should be pointed out, however, that no property may be purchased by the national government in any state without the consent of the state legislature.

> AND TO MAKE ALL LAWS WHICH SHALL BE NECESSARY AND PROPER FOR CARRYING INTO EXECUTION THE FOREGOING POWERS, AND ALL OTHER POWERS VESTED BY THIS CONSTITUTION IN THE GOVERNMENT OF THE UNITED STATES, OR IN ANY DEPARTMENT OR OFFICER THEREOF.

This is known as the "implied powers" clause of the constitution. It gives flexibility to all the preceding powers, although it adds no new ones. By affording a basis for the doctrine of liberal construction it has allowed the powers of Congress to be expanded as new conditions require.

The express powers of the national government are not self-executing. The exercise of every express power requires a law. The constitution gives to Congress, for example, the express power to establish post offices. But the laws determine where post offices shall be located, who shall be in charge of them, what mail may be carried, what the rates of postage shall be, and a great many other things. Without such laws a postal service could not function.

In a word it is by law that congressional powers are carried into effect. Hence it might have been assumed that the power to do things would carry with it the right to make laws incident thereto, but lest any difference of opinion on this matter might arise, this "implied powers clause" was inserted. The Supreme Court has interpreted it liberally, giving to Congress a large range of choice as to the means which may be employed in carrying its powers into effect.

The doctrine of liberal construction was well stated by Chief Justice John Marshall in the case of McCulloch *v.* Maryland, as follows: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, and which are not prohibited but consist with the letter and spirit of the constitution, are constitutional."

Some of the most important functions which the federal government performs to-day have their basis in the implied powers clause. The right of Congress to establish and supervise national banks, for example, is not an express power. The constitution contains no mention of banks or banking. The power of Congress to charter banks is implied (or at any rate

has been held by the Supreme Court to be implied) in the express power to borrow money on the credit of the United States. The right of the national government to designate certain days as "meatless days" during the World War is nowhere expressly granted in the constitution. It is implied, however, in the power "to raise and support armies." In short, the power to establish carries with it the power to maintain. The power to regulate carries with it the power to establish agencies of regulation. The power to secure a designated end carries with it the power to use whatever means are "plainly adapted to that end."

Do these eighteen clauses of Article I, Section 8, give Congress enough authority? In spite of the room for expansion afforded by the implied powers clause, the lapse of time has shown that the framers of the constitution gave Congress too little rather than too much authority. They might well have included the power to make uniform rules concerning the chartering of business corporations, the employment of child labor, uniform divorce laws, the rights of the aliens in the several states, and the protection of the negro. Were the national constitution being framed to-day, we would probably give Congress power over these matters in addition to what it already has.

SECTION 9. THE MIGRATION OR IMPORTATION OF SUCH PERSONS AS ANY OF THE STATES NOW EXISTING SHALL THINK PROPER TO ADMIT, SHALL NOT BE PROHIBITED BY THE CONGRESS PRIOR TO THE YEAR ONE THOUSAND EIGHT HUNDRED AND EIGHT, BUT A TAX OR DUTY MAY BE IMPOSED ON SUCH IMPORTATION, NOT EXCEEDING TEN DOLLARS FOR EACH PERSON.

This section embodies the compromises with slavery, although it avoids the use of that term. Instead of "negro slaves" it prefers to speak of "such persons as any of the states

now existing shall think proper to admit." Congress had been given power to regulate commerce with foreign nations, and those members of the Constitutional Convention who came from the Southern states were afraid that this power might be used by Congress to forbid the further importation of negro slaves from Africa. Naturally they desired that the commerce power should not be so construed. On the other hand, most of the delegates from the Northern states wanted to see this importation stopped. As a compromise it was agreed that Congress should be restrained from interfering with the importation of negro slaves for twenty years, but that meanwhile it might impose an import duty not exceeding ten dollars on each negro slave brought in. Congress respected the terms of this compromise to the letter, but immediately imposed the maximum duty of ten dollars per head, and in 1808 forbade importation altogether. No slaves were brought into the United States after that date. From 1808 to the Civil War the extension of slavery was by the natural increase of the slave population already in the country.

THE PRIVILEGE OF THE WRIT OF HABEAS CORPUS SHALL NOT BE SUSPENDED, UNLESS WHEN IN CASES OF REBELLION OR INVASION THE PUBLIC SAFETY MAY REQUIRE IT.

In the Great Charter of Liberty which was exacted from King John in 1215, there was a provision that "no free man shall be taken or imprisoned, or evicted from his land, or outlawed, or exiled, or in any other way harassed; nor will we go up on him nor will we send upon him save by the lawful judgment of his peers, or by the law of the land." King John made this promise, and several of his successors confirmed it; but the promise was not always kept because there was no court procedure by which a freeman could secure his release from prison when sent there by the king's orders.

Not until the reign of Charles II (1679) was the right of the citizen made effective by the passage of the Habeas Corpus Act. This act permitted anyone who felt himself unjustly detained to sue out a writ before the courts. Such writ, when issued, would compel the jailer or other custodian of the prisoner to produce him in court and to show proper grounds for detention, failing which the court was empowered to order the prisoner's release.

Thus the privilege of the writ of habeas corpus became in England one of the safeguards against the abuse of power. Unfortunately, however, the authorities developed the practice of persuading parliament to pass special acts temporarily suspending the privilege of the writ. The framers of the American constitution were afraid that Congress might fall into the same habit, hence they inserted the provision that no suspension might be ordered except in case of rebellion or invasion.

But, rather curiously, they did not specify who should have power to do the suspending, whether Congress or the President. President Lincoln, during the Civil War, interpreted the provision to mean that he had the right to suspend the writ, but the Supreme Court disagreed with him and ruled that Congress alone possessed such authority. Congress thereupon authorized the President to order suspensions of the writ, wherever he deemed such action desirable, during the remainder of the war.

NO BILL OF ATTAINDER OR EX POST FACTO LAW SHALL BE PASSED.

A bill of attainder is a legislative measure which inflicts a penalty without judicial trial. Bills of attainder were invented in England, the first measure of this kind having been passed by parliament in 1459. They became quite popular during the time of the Tudors and Stuarts because they

afforded an easy way to get rid of anyone who incurred the displeasure of parliament, or of the king when parliament was under his control. In order to condemn a man by bill of attainder there was no need to make definite charges or even to place him on trial and hear his defence. A bill was merely introduced into parliament stating that the accused was an enemy of the realm and providing that he should be put to death or that his property should be confiscated.

Men were often condemned by bill of attainder when they could not have been convicted by a jury or by the process of impeachment, — as in the case of Thomas Wentworth, Earl of Strafford, one of the advisers of Charles I. In this instance the House of Commons brought Strafford before the House of Lords on impeachment but the evidence was so slender that he seemed likely to be acquitted, whereupon the impeachment was dropped and a bill of attainder substituted. The bill passed both Houses with no opportunity for Strafford to present his defence. It then received the royal assent and he was executed.

The injustice of this procedure was clear in the minds of those who framed the American constitution, and hence they wrote into it an absolute prohibition of all such bills. Accordingly there are only two ways in which a penalty can legally be imposed on anyone in the United States, namely, by the judgment of a regular court (including a court martial), or by conviction on impeachment.

Ex post facto laws are also forbidden. This does not mean, however, that all retroactive laws are unconstitutional. A law may reach back and cover past events without being ex post facto within the meaning of the constitution. For example, a law which operates retroactively to the advantage of all concerned is not an ex post facto law. The prohibition applies only to criminal laws, and even here it does stand in the way of laws which operate in favor of the accused. Many

years ago the Supreme Court gave an exact definition of what the term ex post facto law includes. It includes, in the words of the court, "every law that makes an action done before the passing of the law and which was innocent when done, criminal and punishes such action; every law that aggravates a crime or makes it greater than it was when committed; every law that changes the punishment and inflicts a greater punishment than the law annexed to a crime when committed; and every law that alters the legal rules of evidence and requires less or different testimony than the law required at the time of the commission of the offence in order to convict the offender." Such laws, and no others, are ex post facto laws.

NO CAPITATION, OR OTHER DIRECT, TAX SHALL BE LAID, UNLESS IN PROPORTION TO THE CENSUS OR ENUMERATION HEREIN BEFORE DIRECTED TO BE TAKEN.

A capitation tax is better known as a poll tax. The only other form of direct taxation is a tax on land. The Supreme Court of the United States has ruled that all other taxes are indirect, and hence do not have to be apportioned among the states in accordance with this provision. A poll tax, by its very nature, is levied in proportion to population. But a tax upon land is naturally levied on area or valuation, and not according to the number of people on the land. Nevertheless this provision of the constitution definitely requires that Congress, if it levies a tax on land, must make it fall upon the various states in accordance with their population, and not according to area or valuation. If Congress were to levy a tax upon land, it would have to provide, for example, that Rhode Island would contribute more than Montana because it has more people, although it has less than one-hundredth as much land.

In 1894 Congress passed an income tax law imposing a levy

of two per cent on all incomes above four thousand dollars, from whatever source derived. This law was promptly attacked on the ground that it taxed income from land as well as income from other sources. And being a tax on the income from land it was equivalent to a tax upon the land itself, in other words a direct tax that had to be apportioned. The Supreme Court upheld this contention and held the law unconstitutional. The matter was finally straightened out in 1913, however, by the adoption of the Sixteenth Amendment which provides that Congress shall have power to lay and collect *taxes on incomes* from whatever source derived, without apportionment among the states and without regard to any census of enumeration. This amendment is the basis of the present federal income tax laws.

NO TAX OR DUTY SHALL BE LAID ON ARTICLES EXPORTED FROM ANY STATE.

This prohibition applies to all articles sent from one state of the Union into another state, or from any part of the United States to a foreign country. As respects the taxation of exports to foreign countries, it was inserted as a concession to the Southern states. They were afraid that if Congress were given the power to tax exports, it would presently levy an export duty on cotton, tobacco, and the other great staples raised in the South, most of which were exported to Europe. This would handicap the trade of the Southern states.

This prohibition of export duties has been in some respects unfortunate. It has encouraged the depletion of the country's national resources. Congress has not been able to discourage the exportation of lumber, for example, by the imposition of an export tax. Moreover, it has taken from Congress what would have proved at times a lucrative source of income. During the early years of the World War, for instance, an export tax on the munitions would have produced a huge

revenue, and it would have been paid by the European belligerents; but this constitutional provision stood in the way.

Thirty years ago the question arose whether Congress could lay import duties on goods coming from the Philippines and Porto Rico into the United States. Such import taxes would be, in effect, taxes upon exports from the Philippines and Porto Rico. The court held that the term "exports from any state" did not include exports from the insular possessions.

> NO PREFERENCE SHALL BE GIVEN BY ANY REGULATION OF COMMERCE OR REVENUE TO THE PORTS OF ONE STATE OVER THOSE OF ANOTHER: NOR SHALL VESSELS BOUND TO, OR FROM, ONE STATE, BE OBLIGED TO ENTER, CLEAR, OR PAY DUTIES IN ANOTHER.

This provision grew directly out of the troubles which had arisen during the period of the Confederation, when the various states were competing to secure commerce for their own ports and were placing discriminatory regulations upon vessels which came from other states. It was felt to be highly desirable that this competition should be eliminated and that port regulations should be made uniform all along the Atlantic coast. For that reason the power to regulate foreign and interstate commerce was given to Congress, but there was a fear that the latter might show favoritism and try to build up some ports at the expense of others. Hence this stipulation that all ports must be treated alike.

> NO MONEY SHALL BE DRAWN FROM THE TREASURY, BUT IN CONSEQUENCE OF APPROPRIATIONS MADE BY LAW; AND A REGULAR STATEMENT AND ACCOUNT OF THE RECEIPTS AND EXPENDITURES OF ALL PUBLIC MONEY SHALL BE PUBLISHED FROM TIME TO TIME.

This provision embodies another lesson from the history of the English parliament, where, after a long fight, it was estab-

lished that the king had no right to spend public money without a prior appropriation. Appropriation bills are passed by Congress and require the President's signature like other bills. When so passed and signed they have the force of law.

Since the establishment of the new national budget system, the method by which Congress makes appropriations is as follows: Every year the Director of the Budget, an official appointed by the President, asks the various heads of departments (Secretary of State, Secretary of War, etc.) and the several boards (Interstate Commerce Commission, Federal Trade Commission, Civil Service Commission, etc.) to submit estimates of their probable needs for the next fiscal year. Meanwhile the Secretary of the Treasury makes an estimate of the government's probable income from customs duties, income taxes, and all the other existing sources of revenue. When all this data is obtained, it is embodied in an elaborate document known as the national budget and laid before the President. After making such changes in it as he thinks desirable, the President then sends it with his recommendations to the House of Representatives. There it is referred to the Committee on Appropriations, which is probably the most important single committee in the House. Then the Committee on Appropriations takes up the various items one after another at public hearings. At these hearings the heads of departments and chairmen of boards may be asked to appear and answer questions. When the Committee has finished its work, the budget in the form of an appropriation bill is reported to the whole House. There it may be debated and amended, after which it is sent to the Senate, where it goes through much the same procedure. Finally, having passed the Senate, it is laid before the President, who may either sign it or veto it. But the President, as has already been pointed out, must accept or reject the bill as a whole; he cannot veto certain items and let the rest go through.

NO TITLE OF NOBILITY SHALL BE GRANTED BY THE UNITED STATES: AND NO PERSON HOLDING ANY OFFICE OF PROFIT OR TRUST UNDER THEM, SHALL, WITHOUT THE CONSENT OF THE CONGRESS, ACCEPT OF ANY PRESENT, EMOLUMENT, OFFICE, OR TITLE, OF ANY KIND WHATEVER FROM ANY KING, PRINCE, OR FOREIGN STATE.

There was a somewhat similar provision in the Articles of Confederation. It was dictated by a feeling that titles of nobility were inconsistent with the principles of republican government. Some of the colonial charters, notably the one issued to Lord Baltimore in 1632, authorized the granting of such titles, but because of the popular aversion to them no grants were ever made. It will be noted that the prohibition applies only to *persons holding office* and does not include ordinary citizens. An American citizen who accepts a title of nobility from a foreign state does not thereby lose his citizenship. And even in the case of persons holding office it will be noted the prohibition does not apply when Congress gives its consent, as it has done on numerous occasions. During the World War, for example, large numbers of decorations, medals, crosses of honor, and other insignia were given to American officeholders both in the military and civil service by the foreign governments with which the United States was associated in the war. Congress gave its consent to the acceptance of such honors. But it has never permitted an officeholder of the United States to accept a title of nobility from any foreign government.

More than a hundred years ago, a constitutional amendment was passed by Congress and submitted to the states for the purpose of widening the rule against acceptance of foreign honors. This proposed amendment provided that any person accepting a title of nobility or any present, pension, or office from a foreign government should cease to be a citizen

of the United States and should be incapable of holding any future office. It was ratified by many of the states, but failed to obtain the necessary three-fourths.

SECTION 10. NO STATE SHALL ENTER INTO ANY TREATY, ALLIANCE, OR CONFEDERATION;

The constitution intends that the treaty-making power shall be exclusively within the jurisdiction of the national government. Anyone can appreciate what danger of grave international complications there would be if each of the forty-eight states were permitted to conclude treaties or enter into alliances with foreign states. At the outset of the Civil War the Southern states entered into a confederacy, and the Northern states declared this to be a violation of the constitution; to which the Southern states replied that they had withdrawn from the Union and thus become free from the constitution before they formed their confederacy.

GRANT LETTERS OF MARQUE AND REPRISAL;

It will be recalled that this power is not forbidden to the national government (see p. 48). During the early stages of the Revolutionary War, letters of marque and reprisal had been issued by some of the states to privateers, authorizing them to prey upon British commerce; but the value of their work was somewhat doubtful.

COIN MONEY; EMIT BILLS OF CREDIT; MAKE ANY THING BUT GOLD AND SILVER COIN A TENDER IN PAYMENT OF DEBTS;

The national government is expressly authorized to coin money, and in order to make this power an exclusive one the states are forbidden to exercise it. They are also forbidden to issue paper money of any kind. This prohibition was the result of the country's experience during the Revolutionary War and immediately after it. During these years the coun-

try fairly wallowed up to its knees in depreciated state currency. Some of it was worth only a small fraction of its face value, and would not circulate at all outside the state in which it was issued. New York notes would not pass in New Jersey and vice versa. The results on trade were disastrous. James Madison, in one of his letters, spoke of "the pestilential effects" of this paper money, and the framers of the constitution were determined to get rid of it.

But although the states may not issue bills of credit or paper money in their own name, they may establish state banks and empower such banks to issue paper. This they did on a large scale prior to 1863. There were state banks of issue all over the country. In that year, however, Congress passed the National Banking Act which imposed an excise tax of ten per cent annually on the face value of all paper money issued by state banks. This virtually wiped such notes out of existence, and all paper money since 1863 has been issued under the authority of the national government, either directly or through banks which are under its control such as the national banks and the federal reserve banks. The term "bills of credit" has been held to mean paper money intended for circulation, and does not include certificates of indebtedness or state treasury notes which are merely a means of borrowing.

Legal tender is the term applied to such currency as must be accepted by creditors in payment of debts. Congress has full power to determine what paper money shall be legal tender, but the states are forbidden to make anything except gold and silver coin a legal tender within their own boundaries.

PASS ANY BILL OF ATTAINDER, EX POST FACTO LAW, OR LAW IMPAIRING THE OBLIGATION OF CONTRACTS,

The first two prohibitions repeat similar ones which are imposed upon Congress (see p. 58). But the third prohibi-

tion, namely, the one which forbids the enactment of any law impairing the obligation of contracts — it applies to the state legislatures and not to Congress.

A contract is an agreement made between two or more parties and enforceable at law. The making of a contract creates an obligation between the parties who make it, usually an obligation on both sides. A state legislature must not pass any law which impairs such obligations after the contract has been made. In other words a contract which is valid at the time when it is made cannot be rendered void or in any way impaired by subsequent state legislation, or by the ordinances or by-laws of any city, county, or town. This sanctity of the contractual obligation applies to contracts made by the state itself as well as by corporations or individual citizens.

One of the most notable controversies arising under this provision was the so-called Dartmouth College Case which came before the Supreme Court in 1819. Dartmouth College held a charter which it claimed to embody a contract with the State of New Hampshire. The New Hampshire legislature undertook to change this charter against the wishes of the college authorities. Daniel Webster, who was an alumnus of Dartmouth, brought the case before the Supreme Court of the United States and made a famous plea for the unconstitutionality of the New Hampshire law. The court agreed with him and ruled that the charter of the college was a contract which the state legislature had no power to revoke or impair.

This decision does not mean, however, that when a college or other private corporation now receives a charter, no provision of such charter may ever be repealed or altered. The state legislatures, in granting such charters, may make them revocable at will. And that is what all the states have now done by general laws which provide that no charters shall be issued except on the express condition that the legislature may

alter them at any time. The charters of public corporations, moreover, such as cities, counties, and townships, are not contracts in any sense and have never been held so.

OR GRANT ANY TITLE OF NOBILITY.

Here again a prohibition already imposed on Congress is also laid upon the states. It will be noted, however, that this prohibition does not operate to prevent a state officer from accepting a title of nobility, or a pension or decoration from a foreign state. Any state may permit its officers to do this if it chooses, but most of them have prohibited it by the terms of their own state constitutions.

NO STATE SHALL, WITHOUT THE CONSENT OF THE CONGRESS, LAY ANY IMPOSTS OR DUTIES ON IMPORTS OR EXPORTS, EXCEPT WHAT MAY BE ABSOLUTELY NECESSARY FOR EXECUTING ITS INSPECTION LAWS: AND THE NET PRODUCE OF ALL DUTIES AND IMPOSTS, LAID BY ANY STATE ON IMPORTS OR EXPORTS, SHALL BE FOR THE USE OF THE TREASURY OF THE UNITED STATES; AND ALL SUCH LAWS SHALL BE SUBJECT TO THE REVISION AND CONTROL OF THE CONGRESS.

This provision was intended to supplement the power of Congress to control all commerce with foreign nations and among the several states. It forbids the states to set up tariffs applying either to interstate exports or imports, or to foreign nations, unless the consent of Congress has first been obtained. Congress has never given such consent. It has held the tariff-making power exclusively within its own jurisdiction. On the other hand, the states may levy certain fees on goods coming in or going out (on fruit or meats, for example), as a means of defraying the expense connected with the enforcement of its inspection laws. If such taxes yield more than the actual cost of inspection, however, the surplus

must be paid into the treasury of the United States; and in any event, Congress has the right to "revise and control" any state laws imposing inspection fees upon imports or exports.

> NO STATE SHALL, WITHOUT THE CONSENT OF CONGRESS, LAY ANY DUTY OF TONNAGE, KEEP TROOPS, OR SHIPS OF WAR IN TIME OF PEACE, ENTER INTO ANY AGREEMENT OR COMPACT WITH ANOTHER STATE, OR WITH A FOREIGN POWER, OR ENGAGE IN WAR, UNLESS ACTUALLY INVADED, OR IN SUCH IMMINENT DANGER AS WILL NOT ADMIT OF DELAY.

A duty of tonnage is a tax levied upon the cubic carrying capacity of a vessel. It was anticipated that the states might evade a prohibition of duties on imports or exports by taxing the tonnage of vessels entering or leaving their ports; hence this safeguard against tonnage charges without the consent of Congress.

The term "keep troops" was of course not intended to include the regular state militia, the maintenance of which is authorized by the constitution. It means regular troops, constituting a standing army, and does not include either the national guard or the constabulary.

No state may have a navy of its own. Some of the seaboard states have been permitted to keep armed vessels for training purposes in connection with their nautical schools, and occasionally the national government has provided obsolete naval vessels of the United States for this purpose. But no regular war vessel may be kept by any state.

A state may not issue a declaration of war either against another state or against a foreign country. Nor may it commit any act of war, nor engage in war unless invaded or in imminent danger of invasion. All these prohibitions upon the states were intended to reinforce the powers already granted to the federal government.

ARTICLE II

SECTION 1. THE EXECUTIVE POWER SHALL BE VESTED IN A PRESIDENT OF THE UNITED STATES OF AMERICA.

The Articles of Confederation contained no provision for a chief executive. The Congress of the Confederation chose its own presiding officer, but he had no regular executive powers. Executive work was performed by the Congress itself, or by its own committees, or by officials who were designated from time to time for the purpose. But this makeshift arrangement proved unsatisfactory and the framers of the constitution felt that in the new government a strong single executive was necessary. Moreover there was good American precedent for a single executive in the fact that all the states had established governors under their state constitutions. A few delegates in the Constitutional Convention of 1787 favored a plural executive of two or more persons at the head of the national government; but James Madison quoted history to prove that plural executives had always proved a failure. And in the end the Convention unanimously agreed to provide for a single executive to be known as the President of the United States. The only country with a plural executive to-day is Switzerland.

HE SHALL HOLD HIS OFFICE DURING THE TERM OF FOUR YEARS,

The four-year term was adopted after considerable debate. Alexander Hamilton expressed a preference for life tenure and various other delegates were for terms ranging from two to

twelve years. At first the Convention agreed on a seven-year term, with a provision that a President should not be reëlected; but the matter was later reconsidered, and the term was fixed at four years with the proviso against reëlection omitted.

The debates throw no light upon the reasons why this change was made. The Convention merely referred the question to a committee for reconsideration and this committee unanimously reported in favor of the four-year term. Its report was accepted without much discussion.

Under the constitution a President may be reëlected for an unlimited number of terms, but third terms have become barred by usage. Washington started this tradition by declining a third term. Indeed he protested against serving a second term but was persuaded to do it. Washington's objection to a third term was not based on principle. He gave as his reason "the increasing weight of years." Thomas Jefferson likewise declined a third term, but urged the election of his disciple, James Madison. General Grant would have taken a third term if he could have had it; but the Republican National Convention declined to give him a third nomination in 1880. The refusal of a third candidacy by President Coolidge has given the usage new force in recent years.

AND, TOGETHER WITH THE VICE PRESIDENT, CHOSEN FOR THE SAME TERM,

The office of Vice President has by no means fulfilled the hopes of those who framed the constitution. They intended the office to be a dignified and impressive one, its incumbent to be a man second only to the President in the favor of the electors and in line for the higher post at the next election. Hence they provided that the candidate obtaining the highest number of votes in the electoral college should be President and the one receiving the next largest vote in the electoral

college should be Vice President. Unfortunately nothing was said about what should happen in the event of a tie, and a serious mishap was narrowly avoided at the election of 1804 when Jefferson and Burr (candidates for President and Vice President) both got the same number of electoral votes. Congress settled the matter by breaking the tie in Jefferson's favor. To prevent the recurrence of such a deadlock a constitutional amendment (the Eleventh) made provision that the electors should cast separate ballots for President and for Vice President.

In the early days of the Republic it was the custom to promote the Vice President at the next election. This happened in the case of John Adams and Thomas Jefferson, but the practice was then abandoned. In its place arose the custom of nominating for President some prominent member of the cabinet, usually the Secretary of State. Madison and Monroe went up the ladder by this route; but Andrew Jackson shattered the precedent and since 1828 there has been no settled rule of promotion to the presidency. Nor is there any rule with reference to the choice of candidates for the Vice Presidency except that they are used to "strengthen the ticket." In other words, after a national party convention has nominated its presidential candidate it tries to find someone who will supply, as nominee for Vice President, whatever strength the head of the ticket lacks — someone of a different type, from another section of the country, or from another faction of the party.

BE ELECTED AS FOLLOWS: EACH STATE SHALL APPOINT, IN SUCH MANNER AS THE LEGISLATURE THEREOF MAY DIRECT, A NUMBER OF ELECTORS, EQUAL TO THE WHOLE NUMBER OF SENATORS AND REPRESENTATIVES TO WHICH THE STATE MAY BE ENTITLED IN THE CONGRESS:

The method of electing a President and Vice President was one of the most difficult problems which the framers of the constitution had to solve. Repeatedly they debated this question, postponed it, settled it, and then reconsidered it. At least a dozen different methods were proposed. A few members of the Convention desired that the President should be elected by popular vote. Some urged that the President should be elected by the governors of all the states sitting together; but this did not find much favor. Most of the delegates favored having the President chosen by both Houses of Congress in joint session, and this plan was provisionally adopted. But Madison pointed out that this method of election would make the President dependent on Congress and thus destroy the system of checks and balances. So the question was reopened and finally settled in an entirely different way, namely, by resort to a scheme of indirect election through the agency of an electoral college.

This idea of an electoral college was probably suggested by the example of Maryland, where members of the state senate were being chosen through electors. At any rate the scheme of choosing the President and Vice President by means of presidential electors provided a solution for a difficult problem, namely, how to make the choice without letting Congress or the people have any direct share in it.

It will be observed that neither in the original constitution nor in any of the amendments is it provided that the people must have any share in the election of the nation's chief executives. So far as the constitution goes, there is nothing to hinder the various states from abolishing all popular participation in the choice of a President at the polls. The state legislatures, if they so desired, could name the presidential electors themselves and not let the people do it, for the provision is that "each state shall appoint, in such manner as the legis-

lature thereof may direct," its quota of presidential electors. Of course there would be a great popular protest if a state legislature undertook to do anything of the sort. All the state legislatures, therefore, have directed that the presidential electors shall be chosen at the polls by the qualified voters of the state.

According to the constitution, the quota of presidential electors for each state is determined by adding together the number of its senators and representatives in Congress. Nevada, for example, has two senators and one congressman; accordingly it has three presidential electors. New York has two senators and forty-six congressmen; hence it has forty-eight presidential electors. The total number of votes in the electoral college is five hundred and thirty-one; that is to say, the sum of the total membership of the Senate (96) and the House of Representatives (435).

As a matter of practice, the presidential electors in each state are nominated by the political parties, one slate of presidential electors by each party organization. This is done at state party conventions, or at primaries. Then at the November election in each presidential year, the qualified voters mark their ballots for the one or the other of these party slates. The ballots are usually arranged so that by marking a single cross the voter can indicate his preference for the whole column of Republican or Democratic presidential electors as the case may be. Thus in New York a single cross indicates the voter's choice for the entire forty-eight presidential electors of the Republican party or the Democratic party. Strictly speaking, therefore, the President and Vice President are *not* elected in November. Only the presidential electors are elected at that time. The official election of President and Vice President takes place at the hands of these electors who meet in their respective states and vote as will be explained a little later.

BUT NO SENATOR OR REPRESENTATIVE, OR PERSON HOLDING AN OFFICE OF TRUST OR PROFIT UNDER THE UNITED STATES, SHALL BE APPOINTED AN ELECTOR.

Having decided that Congress was to have no hand in the election of a President, it was thought desirable to keep the senators and representatives from gaining the same end in a roundabout way, by getting themselves appointed by the states as presidential electors. The same prohibition was applied to all officeholders of the United States, lest the President might be able, by this means, to perpetuate himself in office. On the other hand, members of state legislatures and holders of state offices are eligible and frequently serve as presidential electors.

[THE ELECTORS SHALL MEET IN THEIR RESPECTIVE STATES, AND VOTE BY BALLOT FOR TWO PERSONS, OF WHOM ONE AT LEAST SHALL NOT BE AN INHABITANT OF THE SAME STATE WITH THEMSELVES. AND THEY SHALL MAKE A LIST OF ALL THE PERSONS VOTED FOR, AND OF THE NUMBER OF VOTES FOR EACH; WHICH LIST THEY SHALL SIGN AND CERTIFY, AND TRANSMIT SEALED TO THE SEAT OF THE GOVERNMENT OF THE UNITED STATES, DIRECTED TO THE PRESIDENT OF THE SENATE. THE PRESIDENT OF THE SENATE SHALL, IN THE PRESENCE OF THE SENATE AND HOUSE OF REPRESENTATIVES, OPEN ALL THE CERTIFICATES, AND THE VOTES SHALL THEN BE COUNTED. THE PERSON HAVING THE GREATEST NUMBER OF VOTES SHALL BE THE PRESIDENT, IF SUCH NUMBER BE A MAJORITY OF THE WHOLE NUMBER OF ELECTORS APPOINTED; AND IF THERE BE MORE THAN ONE WHO HAVE SUCH MAJORITY, AND HAVE AN EQUAL NUMBER OF VOTES, THEN THE HOUSE OF REPRESENTATIVES SHALL IMMEDIATELY CHOOSE BY BALLOT ONE OF

THEM FOR PRESIDENT; AND IF NO PERSON HAVE A MAJORITY, THEN FROM THE FIVE HIGHEST ON THE LIST THE SAID HOUSE SHALL IN LIKE MANNER CHOOSE THE PRESIDENT. BUT IN CHOOSING THE PRESIDENT, THE VOTES SHALL BE TAKEN BY STATES, THE REPRESENTATION FROM EACH STATE HAVING ONE VOTE; A QUORUM FOR THIS PURPOSE SHALL CONSIST OF A MEMBER OR MEMBERS FROM TWO-THIRDS OF THE STATES, AND A MAJORITY OF ALL THE STATES SHALL BE NECESSARY TO A CHOICE. IN EVERY CASE, AFTER THE CHOICE OF THE PRESIDENT, THE PERSON HAVING THE GREATEST NUMBER OF VOTES OF THE ELECTORS SHALL BE THE VICE PRESIDENT. BUT IF THERE SHOULD REMAIN TWO OR MORE WHO HAVE EQUAL VOTES, THE SENATE SHALL CHOOSE FROM THEM BY BALLOT THE VICE PRESIDENT.]

The foregoing provision is inserted in brackets because it is now obsolete. It was replaced in 1804 by the Twelfth Amendment. George Washington and John Adams are the only Presidents who were chosen by this original method. But if you turn to the Twelfth Amendment (p. 149) you will see that the changes are not extensive. The most important change is the provision that the electors shall vote separately for President and for Vice President, thus abolishing the arrangement whereby the person receiving the largest number of electoral votes became President and the person receiving the next largest number became Vice President.

When the constitution was made public and sent to the various states to be ratified in the autumn of 1787, everybody spoke highly of this method of choosing the President by indirect election through the medium of presidential electors. Indeed, this was about the only provision of the constitution which entirely escaped criticism. A writer in *The Federalist*

made the prediction that under this system the presidency could hardly fail to be filled by men of the highest type. Yet, curiously enough, this highly-praised provision was one of the first to break down and require amendment.

> THE CONGRESS MAY DETERMINE THE TIME OF CHOOSING THE ELECTORS, AND THE DAY ON WHICH THEY SHALL GIVE THEIR VOTES; WHICH DAY SHALL BE THE SAME THROUGHOUT THE UNITED STATES.

This is a discretionary power. Until 1872 Congress did not take advantage of this provision to fix a uniform date for the choosing of presidential electors. Prior to that time each of the states fixed its own election day, and different dates were used. By the Act of 1872 Congress provided that the electors must be chosen in each state on the Tuesday following the first Monday in November of every fourth year, and that the electors should meet in their respective states on the second Monday in January following.

> NO PERSON EXCEPT A NATURAL BORN CITIZEN, OR A CITIZEN OF THE UNITED STATES, AT THE TIME OF THE ADOPTION OF THIS CONSTITUTION, SHALL BE ELIGIBLE TO THE OFFICE OF PRESIDENT; NEITHER SHALL ANY PERSON BE ELIGIBLE TO THAT OFFICE WHO SHALL NOT HAVE ATTAINED TO THE AGE OF THIRTY-FIVE YEARS AND BEEN FOURTEEN YEARS A RESIDENT WITHIN THE UNITED STATES.

The men who framed the constitution were haunted by a fear that the new republic might be drawn by some mischance into a disadvantageous alliance. This danger, they thought, would be lessened if the presidency were restricted to native-born citizens. Hence they placed such a requirement in the constitution. On the other hand they realized that there were some trustworthy leaders of the people who had not been

born within the boundaries of the United States and who would be excluded by confining the presidency to natural-born citizens. Among such leaders were James Wilson and Robert Morris of Pennsylvania, William Paterson of New Jersey, and Alexander Hamilton of New York. The Convention hesitated to exclude these men, especially as they were serving in its own membership. Hence the saving-clause for the benefit of any person who was "a citizen of the United States at the time of the adoption of this constitution."

It will be noted that nothing is said about the Vice President being a natural-born citizen. This was an oversight, and an awkward situation might have arisen if a naturalized citizen had been elected to the office of Vice President and had claimed succession to the presidency at any time between 1788 and 1804. In the latter year the omission was filled by the last clause of the Twelfth Amendment (see p. 150).

The age limit for the presidency and the requirement of fourteen years residence were adopted without much trouble. Some members of the Convention were in favor of a property qualification, which is not surprising in view of the fact that property qualifications for office-holding existed in several of the states at the time. But they were in a minority. The requirement as to residence does not mean that a person must have actually lived within the United States for fourteen years, much less does it require that these fourteen years shall be immediately preceding his election. It is sufficient that he shall have been a *legal* resident for fourteen years.

IN CASE OF THE REMOVAL OF THE PRESIDENT FROM OFFICE, OR OF HIS DEATH, RESIGNATION, OR INABILITY TO DISCHARGE THE POWERS AND DUTIES OF THE SAID OFFICE, THE SAME SHALL DEVOLVE ON THE VICE PRESIDENT, AND THE CONGRESS MAY BY LAW PROVIDE FOR THE CASE OF REMOVAL, DEATH, RESIGNATION OR INABIL-

ITY, BOTH OF THE PRESIDENT AND VICE PRESIDENT, DECLARING WHAT OFFICER SHALL THEN ACT AS PRESIDENT, AND SUCH OFFICER SHALL ACT ACCORDINGLY, UNTIL THE DISABILITY BE REMOVED, OR A PRESIDENT SHALL BE ELECTED.

This provision has proved very useful. No President has resigned, but six of them have died in office. The constitution, it will be observed, does not say that the Vice President shall become President in his own right, but merely that the "powers and duties" of the President "shall devolve on the Vice President." The intention, very likely, was that the Vice President should retain his own title and merely serve as Acting President. But the first Vice President to succeed to the office (John Tyler, in 1841) assumed the presidential title as well as the duties of President, and this established a usage which has been continued.

"Inability to discharge the powers and duties of the said office," is a rather indefinite way of expressing any number of contingencies that may arise. Who decides whether the President is unable to perform his functions? As it happens, no Vice President has ever assumed the duties of the office by virtue of the President's inability to exercise them. In 1881 President Garfield was by reason of illness unable to perform the duties of the presidency for several months, and the same was probably true of President Wilson during 1920, but in both cases the nation's business continued to be carried on.

Beyond the Vice President, Congress has power to fix the succession, but not until 1886 did Congress pass a statute to do this. This Succession Act provides that in case of the removal, death, resignation, or inability of both President and Vice President, the eligible members of the cabinet shall succeed in order of the seniority of their positions, that is, the Secretary of State first, then the Secretary of the Treasury,

Secretary of War, and so on down to the junior member of the cabinet, the Secretary of Labor. This act also provides that if Congress is not in session at the time of such change in the executive office, it must be called in special session at once.

In the French Republic there is no Vice President, because the President is chosen by the two chambers of the French parliament in joint session. In case of vacancy, these two chambers must be immediately summoned and a new election held. Meanwhile the cabinet exercises the executive power.

> THE PRESIDENT SHALL, AT STATED TIMES, RECEIVE FOR HIS SERVICES, A COMPENSATION, WHICH SHALL NEITHER BE INCREASED NOR DIMINISHED DURING THE PERIOD FOR WHICH HE SHALL HAVE BEEN ELECTED,

Congress has full power to fix the President's compensation by law, subject only to the stipulation that such compensation must not be changed, either up or down, during the term for which he is elected. The justices of the Supreme Court, as will be seen later, may have their salaries increased but not reduced while in office. Members of Congress are exempt from constitutional limitation as to their salaries. The question has arisen whether an increase in the rate of income tax, as applied to the salary of the President, would not be in effect a diminution of his compensation and hence a violation of the foregoing provision; but this question has never been decided by the courts.

The presidential salary was fixed by the first Congress (1789) at $25,000 a year. It remained at that figure until 1873, when Congress raised it to $50,000 per annum. Another increase was made in 1909, this time to $75,000, with a further allowance of $25,000 for travelling expenses.

> AND HE SHALL NOT RECEIVE WITHIN THAT PERIOD ANY OTHER EMOLUMENT FROM THE UNITED STATES, OR ANY OF THEM.

The design of this provision was to make certain that the President would receive no supplementary payment from his own state. In the words of Alexander Hamilton, he was to "have no pecuniary inducement to renounce or desert the independence intended for him by the constitution."

> BEFORE HE ENTER ON THE EXECUTION OF HIS OFFICE, HE SHALL TAKE THE FOLLOWING OATH OR AFFIRMATION:—"I DO SOLEMNLY SWEAR (OR AFFIRM) THAT I WILL FAITHFULLY EXECUTE THE OFFICE OF PRESIDENT OF THE UNITED STATES, AND WILL TO THE BEST OF MY ABILITY, PRESERVE, PROTECT AND DEFEND THE CONSTITUTION OF THE UNITED STATES."

The privilege of affirmation was intended for any President who might have conscientious scruples against the taking of an oath. As a rule the oath of office (or affirmation) is administered by the Chief Justice of the Supreme Court at the inauguration proceedings on March 4th. But when the Vice President succeeds to the office of President the oath is taken immediately, wherever the Vice President happens to be at the time. It may be administered by anyone who is legally qualified at the place where it is administered. Mr. Coolidge, when he succeeded to the presidency, took the oath of office before his father, a local justice of the peace, at Plymouth, New Hampshire.

> *SECTION* 2. THE PRESIDENT SHALL BE COMMANDER IN CHIEF OF THE ARMY AND NAVY OF THE UNITED STATES, AND OF THE MILITIA OF THE SEVERAL STATES, WHEN CALLED INTO THE ACTUAL SERVICE OF THE UNITED STATES;

In all modern governments the chief executive is the titular commander-in-chief of the armed forces. This is true of monarchies and republics alike. It is so provided in order to make sure that the political branch of the government shall

be at all times superior to the military. Inasmuch as the armed forces constitute the ultimate guarantee for the enforcement of the laws they must be under the control of the law-enforcing authority. All this does not mean, of course, that the chief executive exercises any of the immediate functions of command. The President of the United States delegates such functions to a Secretary of War and Secretary of the Navy. They in turn devolve them upon the higher officers of the army and navy; but the President can overrule any of these subordinates at his discretion. He can issue or countermand any order by virtue of his status as commander-in-chief. All commissions in the army and navy are issued in the President's name, although the commissions given to inferior officers are not usually signed by him.

> HE MAY REQUIRE THE OPINION, IN WRITING, OF THE PRINCIPAL OFFICER IN EACH OF THE EXECUTIVE DEPARTMENTS, UPON ANY SUBJECT RELATING TO THE DUTIES OF THEIR RESPECTIVE OFFICES,

The constitution makes no reference to a cabinet. There is nothing in the records of the Constitutional Convention to indicate that the framers of the constitution had in mind the formation of a cabinet. The English cabinet at this time had not yet established itself on an assured and definite basis. It was still in process of evolution. During the discussions at Philadelphia it was suggested that the President ought to be provided with an advisory council, such as had existed in some of the colonies before the Revolution; but the convention rejected this suggestion. It did not even stipulate that there should be heads of executive departments, but contented itself with providing that if and when such departments were established, the President could require the opinion of the department-heads on any matter relating to the duties of their respective offices.

The first department to be created was the Department of State, which was established by the first Congress (1789) and for a short time was known as the Department of Foreign Affairs. It was followed quickly by the War Department and within a few weeks by the Department of the Treasury and the Department of Justice. The heads of these four departments were then called together from time to time for conferences with the President and became collectively known as the cabinet. Six other departments have been created since 1789, so that there are now ten regular departments, the heads of which constitute the President's cabinet. The cabinet meets once a week or oftener. Inasmuch as it has no constitutional status, its powers are altogether advisory. It can decide nothing, and order nothing on its own authority, but must act through the President. So far as the constitution and the laws are concerned, there is nothing that the President can do with the cabinet's advice which he may not do without it. But having chosen men in whose judgment he has confidence, it is obvious that the President will in the nature of things attach weight to the advice which these men give him on questions of executive policy. Much depends, of course, on the temperament and qualities of the President himself. He may lead, or permit himself to be led.

AND HE SHALL HAVE POWER TO GRANT REPRIEVES AND PARDONS FOR OFFENCES AGAINST THE UNITED STATES,

A reprieve is an exercise of clemency not amounting to a full pardon, — for example, a postponement of sentence or a partial remission of it. A general pardon is known as an amnesty, and may be made by a presidential proclamation. In 1868, for instance, President Andrew Johnson issued a general amnesty, "unconditionally and without reservation" to all who had aided the Southern Confederacy during the

Civil War. With one exception, which will be noted in the next paragraph, the President's power of pardon is absolute and is not subject to any appeal. But its scope extends only to penalties imposed in a federal court, including the courts of the District of Columbia, the territories (such as Alaska, and Hawaii), the insular possessions (the Philippines, Porto Rico, etc.) and the Canal Zone. The President has no power to pardon a person who has been convicted in any state court. The power of pardon is usually exercised by the President on the advice of the Department of Justice.

EXCEPT IN CASES OF IMPEACHMENT.

This is the sole exception to the President's pardoning power, so far as offences against the laws of the United States are concerned. When the United States Senate pronounces its verdict in an impeachment, and by a two-thirds vote declares that a public official has disqualified himself from holding office under the United States, this verdict cannot be appealed, and may not be altered by any authority whatsoever. The exception in cases of impeachment was made because a President is himself liable to impeachment and so are his immediate subordinates. Were it not for this safeguard, therefore, a President convicted on impeachment might pardon himself, or might keep an impeached subordinate in office by pardoning him. That is the way things had been done in England, where the crown had sometimes issued pardons to favored ministers who had been convicted on impeachment before the House of Lords.

HE SHALL HAVE POWER, BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, TO MAKE TREATIES, PROVIDED TWO-THIRDS OF THE SENATORS PRESENT CONCUR;

Treaty is a comprehensive term. It includes all formal agreements between nations. It will be noted that the con-

stitution makes both the "advice and consent" of the Senate requisite to the exercise of the treaty-making power, but as a matter of practice the advice of the Senate is not asked in advance. The negotiations for a treaty are conducted on behalf of the United States by the Department of State, or in rare cases by the President himself. This may be done either at Washington or at a foreign capital, with the American ambassador or minister acting for the State Department and under its instructions. After the various provisions of the treaty have been informally agreed upon, they are incorporated in a formal document and signed by diplomatic representatives of the countries concerned. Then the treaty goes to the Senate for its "consent." The Senate refers the treaty to its Committee on Foreign Relations, which may recommend that the treaty be approved, or rejected, or ratified with amendments or reservations. The Senate then votes on the committee's recommendation. If two-thirds of all the senators present vote to approve a treaty it becomes effective; otherwise it does not.

A treaty, when ratified by the Senate, has the force of law and the judges in all the courts are bound thereby. But it has no greater force than a federal statute, and when the two are in conflict the later in point of time prevails.

Not every international agreement, however, is a treaty. Agreements which relate to routine matters, such as the fixing of postage rates between countries, or the adjustment of pecuniary claims of individual citizens, are known as executive agreements and do not go to the Senate. The line between a treaty and an executive agreement is not altogether clear, and the attempt has sometimes been made to take a detour around the Senate's power by resort to an executive agreement in place of a treaty.

Strictly speaking, the House of Representatives has nothing to do with treaties, but occasions may arise in which action

on its part is virtually essential in order to give the treaty effect. For example, when a treaty provides that money shall be paid, or that reciprocity in trade shall be granted by the United States, there is no way in which the provisions of such an agreement can be fulfilled without action by the House of Representatives. For no money can be paid from the treasury without authorization by the House and no change in the tariff laws can be made without its concurrence.

> AND HE SHALL NOMINATE, AND BY AND WITH THE ADVICE AND CONSENT OF THE SENATE, SHALL APPOINT AMBASSADORS, OTHER PUBLIC MINISTERS AND CONSULS, JUDGES OF THE SUPREME COURT, AND ALL OTHER OFFICERS OF THE UNITED STATES, WHOSE APPOINTMENTS ARE NOT HEREIN OTHERWISE PROVIDED FOR, AND WHICH SHALL BE ESTABLISHED BY LAW:

The initiative, in all important appointments, rests with the President. It is he who takes the first step. But when the President has selected anyone for appointment as an ambassador, or a member of his cabinet, or a justice of the Supreme Court, he is required to transmit the name of his proposed appointee to the Senate for confirmation. The Senate then refers each nomination to the appropriate committee, that is, to its Committee on Foreign Relations, or its Judiciary Committee, or the Committee on Interstate Commerce, depending upon the nature of the position, and votes on the name after the report of this committee has been received. In the case of persons who are nominated by the President as members of his cabinet, the Senate rarely refuses confirmation. It has done so on only two occasions during the past hundred years. But as respects all other appointments, the Senate holds itself free to confirm or reject as the merits of the proposed appointment may dictate. In practice, however, the great majority of presidential nominations are confirmed without delay. A

mere majority of the Senate (not a two-thirds vote) is required for the confirmation of an appointment.

The Senate's action in the matter of confirmations is sometimes influenced by a usage known as "senatorial courtesy." Briefly stated, this is the practice of refusing to confirm the nomination of any local officer, such as a postmaster or collector of internal revenue, unless the nominee is satisfactory to the senator or senators from the state concerned; provided, of course, that these senators are of the same political party as the President himself. Or, to put it more concretely, a Republican President is not supposed to nominate somebody as postmaster at Philadelphia without first consulting the Republican senators from Pennsylvania. If he does so, the other Republican senators, out of courtesy to their Pennsylvania colleagues, feel obliged to refuse confirmation. Senatorial courtesy has had its ups and downs. It has been strong enough at times to tie a President's hands almost completely, but on other occasions a strong chief executive has been able to defy the rule of senatorial courtesy and to push appointments through in spite of it.

The constitution prescribes how the higher civil officers of the United States shall be appointed, but says nothing about the methods by which they may be removed from office. Is the consent of the Senate necessary for the removal of an officer whose appointment it has originally confirmed? The answer is No. Early in the history of the Union the President assumed the power to remove without the consent of the Senate, and the Supreme Court has upheld such action.

> BUT THE CONGRESS MAY BY LAW VEST THE APPOINTMENT OF SUCH INFERIOR OFFICERS, AS THEY THINK PROPER, IN THE PRESIDENT ALONE, IN THE COURTS OF LAW, OR IN THE HEADS OF DEPARTMENTS.

A few appointments have been vested by law in the President alone. A very much larger number have been placed within the jurisdiction of the heads of departments. This last category now includes more than a half million minor offices. Some of them are still treated as patronage and are filled at the suggestion of senators or representatives from the districts concerned, but by far the greater number are now filled in accordance with civil service regulations.

In general, the civil service laws provide that a federal civil service commission of three members, appointed by the President, shall have charge of recruiting all candidates for positions in what is known as the classified service. The commission receives applications for all such positions and holds examinations to test the relative competence of those who apply. Then, when a vacancy occurs, the commission transmits to the appointing authority the names of those who stand at the head of its lists. There are "eligible lists" for accountants, draftsmen, forest rangers, railway mail clerks, stenographers, and so on. The commission examines more than three hundred thousand applicants every year. When a name has been certified by the civil service commission, the head of a department can make the appointment without confirmation by any other authority.

> THE PRESIDENT SHALL HAVE POWER TO FILL UP ALL VACANCIES THAT MAY HAPPEN DURING THE RECESS OF THE SENATE, BY GRANTING COMMISSIONS WHICH SHALL EXPIRE AT THE END OF THEIR NEXT SESSION.

This is the provision which authorizes what are commonly known as "recess appointments." The framers of the constitution evidently intended that this provision should take care of vacancies which unexpectedly happened at a time when the Senate was not in session and hence could not come under the regular rules as to confirmation. It apparently

did not enter their minds that this provision might be used to circumvent the jurisdiction of the Senate; yet that is what has often happened. A name is sent to the Senate by the President and is refused confirmation. Then, when the Senate adjourns, the President can issue a recess appointment to the individual whose nomination has been rejected, and this recess appointment holds good until the end of the Senate's next session, which may be more than a year away. When it expires, moreover, he can give the same individual another recess commission, which similarly holds good until the adjournment of the next senatorial session. By this procedure a President has sometimes managed to keep an official for several years without confirmation.

SECTION 3. HE SHALL FROM TIME TO TIME GIVE TO THE CONGRESS INFORMATION OF THE STATE OF THE UNION,

This injunction has been respected by all the Presidents. It is the practice to give Congress information by sending or reading an annual message at the beginning of its short session in December. In addition, the President transmits special messages whenever matters of importance arise, and he sometimes uses his veto messages to enter upon a general discussion of various problems. A President can send these special messages to Congress as often as he pleases, and they have priority over all other business.

The first two Presidents, Washington and Adams, delivered their messages in person. Jefferson adopted the practice of sending his communications in writing. For more than a hundred years each succeeding president followed the Jefferson plan; but in 1913 President Wilson reverted to the ancient practice by going personally to the House of Representatives, summoning the members of the Senate there, and addressing the two Houses together. This he did on important

occasions only, leaving minor matters to be communicated in writing.

The constitution does not provide, on the other hand, that Congress shall have the right to demand information from the President, or from heads of departments, and more than one chief executive has taken the ground that Congress does not possess such right. President Roosevelt, for example, on one occasion instructed the Attorney-General to refuse a demand of the Senate for certain information concerning violations of the anti-trust laws. As a matter of general practice, however, when Congress (or either House of it) requests information from the President or from the heads of departments, such request is usually complied with, unless there are reasons of state which seem to make publicity undesirable. Heads of departments often appear before committees of Congress and give information when they are asked to do so.

AND RECOMMEND TO THEIR CONSIDERATION SUCH MEASURES AS HE SHALL JUDGE NECESSARY AND EXPEDIENT;

In a sense this provision would seem to violate the principle of separation of powers. The executive branch of the government is supposed to have no part in the making of laws, nevertheless this clause entrusts to the chief executive the power to recommend the enactment of such laws as he may see fit. Various presidents, both in their annual and special messages to Congress, have exercised the authority given to them by this provision. As a rule the President does not submit to Congress any definite outline of legislation to be enacted; he merely urges the need in general terms and lets Congress work out the details. The one notable exception to this, and the most important measure recommended to Congress by the President, is the budget. This is prepared by the director

of the budget and after approval by the President is transmitted to Congress in full detail.

HE MAY, ON EXTRAORDINARY OCCASIONS, CONVENE BOTH HOUSES, OR EITHER OF THEM,

Both Houses of Congress, as has been pointed out, meet for one regular session each year. In the even numbered years they convene for a short session which must come to a close by the following fourth of March. In the odd numbered years they hold a long session which sometimes continues for six months or more. In addition to these regular sessions, the President may convene both Houses, or either of them, in special session at any time. Special sessions of both Houses are not common, but the Senate has often been called into special session to ratify a treaty, this being a special function which does not, under ordinary circumstances, necessitate the consent of the House.

AND IN CASE OF DISAGREEMENT BETWEEN THEM, WITH RESPECT TO THE TIME OF ADJOURNMENT, HE MAY ADJOURN THEM TO SUCH TIME AS HE SHALL THINK PROPER;

In the first instance, the two Houses of Congress adjourn by mutual agreement. The leaders confer on this matter and come to some arrangement which is satisfactory to both chambers. Sometimes it happens that one House has finished its business before the other. In that case it can spin out its sessions by adjourning for not more than three days at a time until the other is ready. During all the years that have elapsed since the constitution went into force, the two Houses of Congress have never failed to agree upon a time for adjournment; hence it has never been necessary for the President to exercise the authority given him in this provision.

HE SHALL RECEIVE AMBASSADORS AND OTHER PUBLIC MINISTERS;

According to the usages of international law, diplomatic negotiations between different countries are carried on through agents who are known as ambassadors and ministers. The difference between an ambassador and a minister is one of rank, not of powers or functions. The United States sends to and receives ambassadors from eight or ten of the chief countries of the world; it sends to and receives ministers from all the rest. When the ambassador of a foreign country arrives in Washington he presents his credentials and is received in audience by the President. A minister of a foreign country, on the other hand, is received by the Secretary of State.

The United States may decline to receive an ambassador or a minister who is deemed objectionable for any reason; and as a matter of practice, foreign countries always inquire in advance whether a proposed diplomatic representative will be *persona grata*. The President may also dismiss an ambassador or minister by instructing the State Department to hand him his passports, thus indicating to him that his presence in the United States is no longer desired. Occasionally such dismissals have taken place, the last instance being the case of the Austrian ambassador, Dr. Dumba, for unneutral conduct prior to America's entrance into the World War. Ordinarily, however, it is not necessary to take the drastic step of openly dismissing an ambassador. A hint to his home government will usually secure a prompt recall.

HE SHALL TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED,

This provision indicates as clearly as anything can that the President is the chief executive of the nation. The power to execute the laws is given to him and to no one else. Assuming that a law is constitutional, the power of the President to execute it is without limit and cannot be controlled by the

judicial branch of the government. The President is sworn to execute the laws, and must be left unhampered in the fulfillment of this obligation. No court has jurisdiction to interfere with him in the performance of his sworn duty. On the other hand, like any other executive official, the President must keep within the bounds of the law and cannot enforce anything that the laws do not definitely cover.

AND SHALL COMMISSION ALL OFFICERS OF THE UNITED STATES.

Official appointments are made by the issue of documents known as commissions. These are drawn up in legal form and are signed by the President or by some one on his behalf. Commissions issued to important officers, such as members of the cabinet, judges of the Supreme Court, or diplomatic representatives, are signed by the President personally.

SECTION 4. THE PRESIDENT, VICE PRESIDENT AND ALL CIVIL OFFICERS OF THE UNITED STATES, SHALL BE REMOVED FROM OFFICE ON IMPEACHMENT FOR, AND CONVICTION OF, TREASON, BRIBERY, OR OTHER HIGH CRIMES AND MISDEMEANORS.

This paragraph answers the question, "Who may be impeached?" Only the President, Vice President, and civil officers of the United States. The category of "all civil officers" includes members of the cabinet, ambassadors, judges of the federal courts, even postmasters; but it does not include members of Congress, or officials of the several states. Members of the Senate and the House may be expelled by a two-thirds vote of their respective chambers, but they cannot be impeached by the Senate of the United States, for the reason that they are not civil officers of the United States. This was decided by the Senate in the Blount case (1797). Blount was a senator whom the House sought to impeach. The

Senate ruled that senators were officers of their respective states, not officers of the United States.

May a civil officer of the United States be impeached for an offence committed while holding office, even though he is no longer in office when the impeachment proceedings begin? The Senate answered this query in the Belknap case (see pp. 16–17).

For what offences may a civil officer be impeached? The constitution specifies "treason, bribery, or other high crimes and misdemeanors." The first two words of this clause are definite enough, but the rest of it is somewhat ambiguous. In many of the states the term misdemeanor is used for offences of a very trivial sort, such as parking an automobile too near a fire hydrant. Obviously it was not intended that impeachment proceedings should be brought for such contraventions. In general it is now understood that civil officers are not impeachable except for grave misconduct, or for serious malfeasance in office. Common inefficiency, or bad judgment, or the abuse of an officer's discretionary power, are not grounds for impeachment. The penalty which can be imposed upon conviction at the close of an impeachment proceeding is limited to removal from office and disqualification from further office holding in the federal service. No fine or imprisonment can be stipulated by the Senate on conviction by impeachment; but if the impeached official has committed any offence which is punishable by fine or imprisonment in the ordinary courts he may be prosecuted there as well. Impeachment is not a bar to such prosecution.

ARTICLE III

SECTION 1. THE JUDICIAL POWER OF THE UNITED STATES SHALL BE VESTED IN ONE SUPREME COURT,

Only one federal court is definitely named in the constitution — the Supreme Court of the United States. The next provision of the constitution, however, empowers Congress to establish such inferior courts as it may deem desirable, and Congress has availed itself of this power.

The Supreme Court of the United States is composed of a Chief Justice and eight associate justices, each appointed by the President with the consent of the Senate, to hold office during good behavior. No justice may be removed except by impeachment, nor can his compensation be diminished during his term of office. The court sits at Washington in the old Senate chamber (although a new building is now being erected for it) and its sessions usually continue from October until May. It makes its own rules of procedure. Sessions of the court are mainly devoted to hearing the oral arguments of attorneys who also file printed briefs for the justices to study. Decisions are reached by majority vote.

Cases may be brought before the Supreme Court in any one of three ways: by original suit (in a few instances), by the removal of a case from a state court, or by an appeal from a lower federal court. Original jurisdiction, as will be seen later, is very unusual. Removal of cases from state courts is much more common. Appeals from a lower court to the Supreme Court are carried by filing a writ of error, which is a formal order instructing the lower court to transmit the record.

The Supreme Court is often called the guardian of the constitution. It has the right to declare the unconstitutionality of any law, whether passed by Congress or by a state legislature, if the court feels the law to be in conflict with the national constitution. This power to declare laws unconstitutional is not given to the Supreme Court in express terms. The court merely assumed this power in early days and has continued to exercise it. Although a far-reaching power and almost unique in the history of government, it has been beneficial in its exercise. It has held both Congress and the state legislatures to a strict observance of the national constitution.

There is a common impression that the Supreme Court invalidates a great many acts of Congress (one of them every few days), but this impression is wholly unfounded. In the entire history of the Supreme Court, it has held only about fifty federal laws unconstitutional — an average of one law every two or three years. Yet Congress passes many hundreds of laws at every session. Complaint is made, moreover, that the Supreme Court sometimes declares the unconstitutionality of a law by a five to four vote of the justices. There have been only nine such instances in one hundred and forty years.

AND IN SUCH INFERIOR COURTS AS THE CONGRESS MAY FROM TIME TO TIME ORDAIN AND ESTABLISH.

Congress lost no time in taking advantage of this provision. By the Judiciary Act of 1789, which organized the Supreme Court, a system of subordinate federal courts was also created, consisting of circuit and district courts. During the nineteenth century this act was many times amended and the legislation became so complicated that in 1911 it was entirely revised by the judicial code of that year.

At present there are two sets of inferior federal courts, namely, the federal district courts and the circuit courts of

appeal. The entire territory of the United States is divided into some eighty-one districts, each state constituting at least one district and the more populous states having two districts or even more within their boundaries. New York State, for example, is divided into four federal judicial districts. Each district court has its own judge, as a rule; but in a few cases one judge serves two districts, and a few districts have more than one judge. The district court is a court of first instance and is the only regular federal court in which a jury is used. Every district court has its own United States attorney and marshal, both of them appointed by the President with the consent of the Senate. Each district court also has a federal commissioner who conducts the preliminary hearing in criminal cases and decides whether an accused person shall be held for the federal grand jury. Most cases within federal jurisdiction begin in the district court and the great majority of them are ended there, only a small percentage going to the higher courts. The federal district courts hear no appeals whatsoever; their jurisdiction is wholly confined to cases coming up in the first instance.

Above these federal district courts are the circuit courts of appeal. The territory of the United States is divided into nine circuits, each circuit containing three or more states. There is a circuit court of appeal for each of these nine circuits, such courts having from two to four judges according to the amount of business to be done. In addition, one justice of the Supreme Court is assigned to each circuit; but the Supreme Court justices do not go on the circuits at all. Each circuit court of appeal hears controversies which come up to it from the federal district courts below. In many cases, where no issue relating to the constitutionality of a law is raised, the circuit court of appeal has final authority.

Two special courts have been created by Congress under authority granted in the foregoing provision. One is the

court of claims, consisting of a chief justice and four associate justices appointed by the President. It hears and determines all claims against the federal government. Under certain restrictions there is a right of appeal to the Supreme Court. The other special court, known as the court of customs appeals, dates from 1909. Its function is to serve as a court in all controversies regarding the administration of the tariff law.

> THE JUDGES, BOTH OF THE SUPREME AND INFERIOR COURTS, SHALL HOLD THEIR OFFICES DURING GOOD BEHAVIOR, AND SHALL, AT STATED TIMES, RECEIVE FOR THEIR SERVICES, A COMPENSATION WHICH SHALL NOT BE DIMINISHED DURING THEIR CONTINUANCE IN OFFICE.

This provision harks back to one of the grievances embodied in the Declaration of Independence, namely that the British king "has made judges dependent on his will alone for the tenure of their office and the amount and payment of their salaries." The framers of the constitution were at pains to make sure that no federal judge should be dependent on any one for the tenure of his office, or for the payment of his compensation. There is no age limit for the retirement of a Supreme Court justice and it would not be constitutional for Congress to impose such a limit. One of the active justices of the Supreme Court at the present time is almost ninety years of age. The compensation of a federal judge can be increased during his term of office but it must not be diminished even in a roundabout way. In 1920, for example, the Supreme Court held that even the imposition of a new income tax upon the salary of a federal judge was contrary to this provision of the constitution, being in effect a reduction of compensation during the judge's term of office. In the course of its decision, the Supreme Court pointed out that the primary purpose of this constitutional safeguard was not to confer a personal

advantage upon the judges but to insure a thoroughly independent judiciary.

SECTION 2. THE JUDICIAL POWER SHALL EXTEND TO ALL CASES, IN LAW AND EQUITY,

These apparently simple terms, "law and equity," demand some explanation. The jurisdiction of the federal courts, to begin with, includes *cases in law;* but what is law? In general, law is made up of three divisions; first, constitutional law; second, statutory law; and third, common law. Constitutional law is that body of rules which is incorporated in the federal constitution, its amendments, and in the judicial decisions based thereon. It is the supreme law of the land. Statutory law is law made by definite action of Congress, or, in the states, by action of the state legislatures. Statutory law is also directly enacted in some of the states by the people through the initiative and referendum. The ordinances of a city council or other municipal legislative body are also included within the category of statutory law.

Both constitutional law and statutory law have a definite source. They are made by positive action. Common law, on the other hand, is made up of various time-honored usages, some of which go back many hundreds of years. The common law began its growth in mediaeval England when there were very few written rules and the courts found it necessary to decide cases in accordance with the usages of the people. Gradually these decisions of the courts became uniform, one tribunal following the example of another until this body of usages, as interpreted by judicial decision, became "common" or universal throughout the whole realm of England, although it had never been so established by any act of Parliament. During several centuries the great body of legal rules developed in this way, and the system of common law was brought by the English colonists to America, where it speedily took root

and was administered by the colonial courts. After the Revolution it was continued and it still remains the groundwork of American law. Where the common law and the statute are in conflict, the statute prevails. Where statutory and constitutional law are in conflict, the latter always prevails. The judicial power of the United States extends to all three classes of law.

Then there is equity. People often think of this word as implying something that is more just than the law; something which has its roots in the conscience of the judge rather than in the literal words of the law books; but equity as actually administered by the courts is made up of various formal rules which the judges must apply in certain cases without having much discretion. The rules of equity are written in books just like the rules of law, and they are about as rigid.

The origin of these rules, by the way, is an interesting story which may be briefly told as follows: In early England there grew up, side by side with the common law, a set of unwritten rules administered by the King's Chancellor. These rules were intended to afford relief in cases where the application of the law might work injustice; but in course of time this discretionary power of the chancellor became vested in a regular court known as the court of chancery, and the jurisdiction of this court was gradually widened. Ultimately a complete set of rules or principles was formulated by the decisions of this court.

These rules of equity were brought to America in colonial days, were retained after the Revolution, and continue in force at the present time. In general, equity applies only to certain classes of civil suits and never to criminal cases. Its procedure is simple. A jury is not ordinarily summoned to hear the facts. Evidence may be submitted and judgment is given by the issuance of an order or decree, not by the awarding of a certain sum in damages. These are the main

differences between law and equity, but there are other differences too technical for explanation here; even lawyers sometimes fail to understand them thoroughly. Law and equity, however, are administered by the same federal courts.

ARISING UNDER THIS CONSTITUTION,

Whenever a legal controversy involves the application or interpretation of any provision in the Constitution of the United States, the case comes within the jurisdiction of the federal courts. If such case arises in one of the state courts, it may be transferred to the federal courts for the determination of the constitutional points involved. There is a common impression that only the Supreme Court of the United States can declare a law to be unconstitutional. As a matter of fact, the unconstitutionality of a national law can be declared by any federal court, but always with the right of an appeal to the Supreme Court, which has the last word in such matters. But the federal courts do not decide constitutional questions if such an issue can be avoided. In other words, if the case can be settled on its own merits without raising the issue of constitutionality, the latter question will always be passed over in silence.

THE LAWS OF THE UNITED STATES,

The laws of the United States are enforced by the courts of the United States, not by the courts of the several states. The national government is provided with its own full set of governmental machinery, legislative, executive, and judicial. The Congress of the United States makes laws within its own sphere of jurisdiction; the executive authorities of the United States are charged with the execution of such laws, and the federal courts are vested with full authority to enforce these laws. In short, the federal courts are the agencies for enforcing the national laws, while the state courts are the agencies for en-

forcing state laws. Each has its own field of jurisdiction and one does not encroach upon the other.

AND TREATIES MADE, OR WHICH SHALL BE MADE, UNDER THEIR AUTHORITY;

A treaty, when signed by the President and ratified by the Senate, has the status of a federal law. Its provisions are executed by federal officers and violations of a treaty can be penalized in the federal courts. If a treaty and a national law come into conflict the later in point of time prevails. When a treaty and a state law come into conflict, the treaty prevails; and where two treaties are in conflict, the more recent one prevails. A treaty, like a law, may be unconstitutional. For example, a treaty providing that a foreign government might take the property of American citizens, located in the United States, without giving them just compensation, would clearly fall in that category and would be held invalid by the courts.

TO ALL CASES AFFECTING AMBASSADORS, OTHER PUBLIC MINISTERS, AND CONSULS;

According to the rules of international law, ambassadors and other diplomatic officials have certain immunities from jurisdiction in the countries to which they are sent. Broadly speaking, they may not be arrested on civil process; their embassies and legations must not be entered by local police officers and searched; their mails are free from all censorship (they may even import intoxicating liquors in their mail pouches despite the Volstead Act), and they are not subject to taxation. To afford adequate protection against the possible infringement of these privileges by the state courts, the federal constitution stipulates that all cases affecting ambassadors and other public ministers shall be within the jurisdiction of the federal courts.

Consuls are not diplomatic agents under the rules of international law and have no legal immunities. Strictly speaking, they should not have been included within the above paragraph of the constitution; but in 1787 the position and rights of consuls were not so clearly defined as they now are.

TO ALL CASES OF ADMIRALTY AND MARITIME JURISDICTION;

In England, even before the American colonies were established, there developed a branch of the law known as the law of admiralty. In general this branch of the law dealt with controversies arising out of navigation and commerce at sea. The law of admiralty was brought to America in colonial days and became established here. The makers of the constitution felt it desirable that cases affecting maritime navigation should be heard in the federal courts rather than in the state courts because otherwise there might be conflicts of jurisdiction. Take, for example, the case of a vessel plying between the ports of two American states. Which state would have jurisdiction in a suit arising out of a collision on the high seas? The constitution settles the matter by giving jurisdiction to neither, but vesting it in the federal courts. These courts have jurisdiction over American citizens and American property on the high seas.

TO CONTROVERSIES TO WHICH THE UNITED STATES SHALL BE A PARTY;

Any suit involving the United States either as plaintiff or defendant must be heard in the federal courts. The United States has the privilege of bringing a suit in its own courts whenever a foreign country or one of the states of the Union is concerned. It may also proceed against any individual or corporation in its own courts. This is done in a great many cases, for example, in suits to collect taxes due to the federal

government. On the other hand, the government of the United States cannot be sued except in its own courts. No suit against the United States can be brought in any state court.

Nor can the United States be sued, even in its own federal courts by any corporation or individual at will. For it is a general rule of law that a sovereign nation or state cannot be sued in its own courts without its own consent. As a matter of fact, the United States has consented to waive its sovereign immunity as respects a good many matters. By law it has permitted corporations and individuals to enter suits against it in a special court which has been provided for that purpose, namely, the court of claims (see p. 98).

TO CONTROVERSIES BETWEEN TWO OR MORE STATES;

The makers of the constitution regarded this as a very important provision, and rightly so, because it provided a means for putting an end to the angry controversies which were bound to arise between the states from time to time. During the years immediately preceding 1787, there were a number of such controversies. Different states were on the verge of hostilities with one another over matters which were clearly justiciable, yet there was no court with authority to settle such disputes. Hence the stipulation that in future controversies which might arise between two or more states of the Union the federal courts should have jurisdiction. A little later in the constitution this jurisdiction is exclusively reserved to the Supreme Court. Many matters of great importance affecting the interests of two or more states have come up to the Supreme Court under this provision. Perhaps the most notable was the case of Missouri *vs.* Illinois (1906) concerning the pollution of the Mississippi River by the Chicago Drainage Canal.

BETWEEN A STATE AND CITIZENS OF ANOTHER STATE;

This clause is ambiguous and its insertion in the constitution gave rise to trouble. Apparently the intention was to cover only cases in which a state would bring a suit against citizens of another state. But that is not what the wording of the clause provides. On the contrary it implies that citizens of one state may bring suits in the federal courts against another state, thus forcing a sovereign state into the federal courts as defendant against its will. At any rate that is what the Supreme Court, in one of its early decisions, interpreted the clause to mean (Chisholm *vs.* Georgia, 1793). Chisholm, a citizen of North Carolina, brought suit in the federal courts against the State of Georgia. When the Supreme Court upheld his right to do this, Georgia raised the cry of "state sovereignty," and the other states joined with her. The proposition that any citizen of one state could drag another state before the federal courts and obtain judgment there was deemed to be intolerable infringement upon state independence.

Accordingly, Congress was persuaded to propose a constitutional provision which was quickly ratified by the states and became the Eleventh Amendment. This amendment, as will be seen later, declares that the judicial power of the United States shall not be construed to extend to suits prosecuted against a state by citizens of another state. In other words, while a state of the Union can now sue citizens of another state in the federal courts, it is not itself liable to be sued in that way. If a citizen of Rhode Island has a claim against the State of Connecticut, for example, he must bring such suit in the Connecticut courts. Even there his case will be thrown out unless Connecticut has by statute permitted such suits to be brought. In the absence of such consent the citizen with a claim against a state has no redress except a petition to the state legislature.

BETWEEN CITIZENS OF DIFFERENT STATES,

This clause was inserted in order to insure recourse to neutral courts for the determination of important controversies between citizens of different states. Clearly it would not be fair to give the courts of either the plaintiff's or the defendant's state sole jurisdiction in cases where the parties to the suit happened to be of different state citizenship.

But although the constitution provides that controversies between citizens of different states are within the jurisdiction of the United States, this does not mean that the federal courts must assume *exclusive* jurisdiction in all such cases. Congress has power to determine how far the jurisdiction of the lower federal courts shall extend, and the national laws provide that suits between citizens of different states must go to the state courts if no question of federal right is involved, and if the amount in controversy does not exceed twenty-five hundred dollars. Even if the amount exceeds this sum the plaintiff has the option of commencing his suit in a federal court, or in the courts of his own state, or the courts of the defendant's state. This arrangement was deemed essential in order to protect the federal courts from being overwhelmed by a flood of individual controversies. A corporation is presumed, for purposes of jurisdiction, to be a citizen of the state in which it was chartered or incorporated, even though it may be doing the larger part of its business in some other state.

BETWEEN CITIZENS OF THE SAME STATE CLAIMING LANDS UNDER GRANTS OF DIFFERENT STATES,

At the time the constitution was adopted, there were many controversies concerning state boundaries. In many instances two or more states were claiming the same tract of territory, and each of them had granted lands to settlers in the disputed

areas. Hence the same tract of land was sometimes claimed by two or even three persons under grants which seemed to be equally valid. Quite properly, the constitution provided that the determination of such disputes should be given to the federal courts, and not to the courts of the states immediately concerned.

> AND BETWEEN A STATE, OR THE CITIZENS THEREOF, AND FOREIGN STATES, CITIZENS OR SUBJECTS.

A foreign country, or a foreign citizen, is entitled to sue an American citizen in the federal courts. A state of the Union may also sue a foreign nation or its citizens in the courts of the United States. But under the provisions of the Eleventh Amendment no suit can be brought by a foreign citizen or a foreign corporation against a state of the Union in the courts of the United States. It will be noted, however, that a foreign nation can bring such a suit against a state of the Union; there being no such prohibition in the Eleventh Amendment.

> IN ALL CASES AFFECTING AMBASSADORS, OTHER PUBLIC MINISTERS AND CONSULS, AND THOSE IN WHICH A STATE SHALL BE PARTY, THE SUPREME COURT SHALL HAVE ORIGINAL JURISDICTION.

There are two kinds of jurisdiction which a court may have, namely, original jurisdiction, and appellate jurisdiction. By original jurisdiction is meant jurisdiction in the first instance. By appellate jurisdiction is meant the hearing of appeals from a lower court. The original jurisdiction of the Supreme Court is confined to two classes of cases: first, cases affecting persons who are possessed of diplomatic immunity, and second, cases in which a state of the Union is either plaintiff or defendant.

IN ALL THE OTHER CASES BEFORE MENTIONED, THE SUPREME COURT SHALL HAVE APPELLATE JURISDICTION, BOTH AS TO LAW AND FACT, WITH SUCH EXCEPTIONS, AND UNDER SUCH REGULATIONS AS THE CONGRESS SHALL MAKE.

At least ninety-nine per cent of all the cases which come before the Supreme Court of the United States are on removal from the state courts, or on appeal from the lower federal courts. But Congress has made various exceptions to the general rule that the Supreme Court shall have appellate jurisdiction both as to law and fact. It has provided that most cases shall not be carried beyond the circuit court of appeals. It has also provided that appeals to the Supreme Court may be taken on questions of law only, and that the facts as determined by a jury in the lower courts shall be conclusive.

Occasionally one hears it said that the saving clause "with such exceptions and under such regulations as the Congress shall make" would permit the placing of a limit upon the Supreme Court's power to declare laws unconstitutional. Congress, it is asserted, might pass a statute providing that the Supreme Court should not have appellate jurisdiction to the extent of invalidating a national law. But there is no force in this contention. A statute taking away the appellate jurisdiction of the Supreme Court in cases involving the unconstitutionality of a federal law would itself be unconstitutional under the doctrine enunciated in Marbury *v.* Madison.

THE TRIAL OF ALL CRIMES, EXCEPT IN CASES OF IMPEACHMENT, SHALL BE BY JURY;

Trial by jury is an ancient institution. It goes back to the early Middle Ages. It had existed in England for centuries before the American colonies were established. With various other English judicial institutions, trial by jury was brought to the New World and speedily took firm root. The colonists, prior to the Revolution, regarded trial by jury as one of their

inalienable rights, and so stated in their colonial protest of 1765. Eleven years later, the Declaration of Independence enumerated among its various grievances an assertion that the English king had deprived the colonists in many cases of "the benefits of trial by jury."

Hence the framers of the constitution thought it advisable to make an explicit provision on this point by declaring that the trial of all crimes should be by jury, save only in cases of impeachment, where the Senate of the United States would provide the equivalent of a jury trial. It should be noted, however, that this provision of the constitution extends to criminal cases only and does not include the trial of civil controversies. But the Seventh Amendment, as will be observed later, extended the right of trial by jury to civil cases where the amount in controversy exceeds twenty dollars.

Both the provision for jury trial in criminal cases and the extension of this procedure to civil cases by the Seventh Amendment have been held to bind the federal courts only. They do not make trial by jury compulsory in any of the states. Every state constitution can guarantee trial by jury, or omit such guarantee, as the people of the state may think fit. As a matter of fact, most of the state constitutions do require that the jury system be used in criminal cases.

> AND SUCH TRIAL SHALL BE HELD IN THE STATE WHERE THE SAID CRIMES SHALL HAVE BEEN COMMITTED;

This provision is intended to supplement the right of trial by jury, for this right could be virtually negatived if it were possible to remove an accused person from among his own neighbors to be tried by strangers. In colonial days the British parliament had passed an act permitting residents of the American colonies to be removed for trial (in the case of specified offences) to any part of Great Britain. The Declara-

tion of Independence inveighed against this legislation "for transporting us beyond the seas to be tried for pretended offences."

The rule which forbids removal to another state for trial has been strictly construed. When an offence against the laws of the United States is committed in Pennsylvania, for example, the trial must take place in that state before the federal district court having jurisdiction there. Some years ago an Indianapolis editor was arrested by federal officers and charged with criminal libel. An attempt was made to have his trial conducted in Washington on the ground that although his newspaper was published in Indianapolis, it was circulated in the District of Columbia. The federal courts denied the application. In the state courts it is sometimes possible, for good reason, to secure a change of venue from one county to another; but in the federal courts there can be no change of venue from state to state.

> BUT WHEN NOT COMMITTED WITHIN ANY STATE, THE TRIAL SHALL BE AT SUCH PLACE OR PLACES AS THE CONGRESS MAY BY LAW HAVE DIRECTED.

This refers to offences committed within the District of Columbia, the territories, insular possessions, canal zone, or on the high seas. With respect to offences occurring within any of the foregoing places, Congress has the right to determine by law where the trial shall take place. The framers of the constitution took care to use the past tense in the concluding clause of this provision, which means that Congress is not empowered to make changes as respects the place of trial after an offence has been committed.

> *SECTION* 3. TREASON AGAINST THE UNITED STATES, SHALL CONSIST ONLY IN LEVYING WAR AGAINST THEM, OR IN ADHERING TO THEIR ENEMIES, GIVING THEM AID AND COMFORT.

Here is incorporated in the Constitution of the United States another lesson from English political history. Treason is the oldest of crimes. In England it goes back to the time of the Saxon kings. Originally it was the offence of killing the monarch, but in the course of time various other offences were included, such as levying war against the king, or committing an assault upon some member of the king's household. Gradually, through the centuries, the list of treasonable offences was steadily widened by the creation of "new-fangled treasons," such as holding communication with foreign princes, or bringing papal mandates into the realm, or even criticising the acts of the crown. Ultimately there were nearly a hundred different offences classifiable as treason under the laws of England. This unrestricted power of Parliament to make and alter the law of treason gave rise to all manner of abuses and oppressions, especially during the Stuart period.

To make sure that there would be no such extension of the law of treason in the United States, the framers of the constitution decided to define the crime of treason and to restrict it to a single definite offence, namely, that of levying war against the United States, adhering to their enemies, giving them aid and comfort. In the case of Aaron Burr (1807), it was held that mere conspiracy to levy war was not enough, but that there must be an overt act of levying war, or of adhering to enemies, or of giving aid and comfort. Such aid and comfort, however, may be given not only by actual enlistment, or by the furnishing of supplies and materials to the enemies of the United States, but by the publication of any statement or information which would assist the enemy. Acts of this nature are treasonable whether committed within the United States or elsewhere, and whether committed by a citizen of the United States or by an alien residing within the jurisdiction.

NO PERSON SHALL BE CONVICTED OF TREASON UNLESS ON THE TESTIMONY OF TWO WITNESSES TO THE SAME OVERT ACT, OR ON CONFESSION IN OPEN COURT.

In England it had been customary to convict persons of treason on the evidence of a single witness. In some cases convictions were made upon testimony in writing, without any cross-examination in open court. In other cases convictions were secured upon the confessions of the accused persons when such confessions had undoubtedly been obtained by process of torture. To guard against all such injustice the constitution of the United States makes definite provision that no one can be convicted of treason against the United States unless there be the coincident testimony of two witnesses to the same overt act, or unless the confession of the accused person is made freely and voluntarily, in open court. The trial of a person accused of treason, moreover, must be by jury unless the asserted traitor is a civil officer of the United States, in which case he may be put on trial by impeachment.

THE CONGRESS SHALL HAVE POWER TO DECLARE THE PUNISHMENT OF TREASON, BUT NO ATTAINDER OF TREASON SHALL WORK CORRUPTION OF BLOOD, OR FORFEITURE EXCEPT DURING THE LIFE OF THE PERSON ATTAINTED.

Immediately after the constitution went into force, Congress prescribed that persons convicted of treason against the United States should be sentenced to death by hanging. Later, the law was amended to provide that either the death penalty or imprisonment and fine, together with the loss of all right to hold office under the United States, might be imposed at the discretion of the court.

In eighteenth-century England a person convicted of treason was "attainted," and his property became forfeited to the

crown. Not only that, but his descendants were often debarred from holding public office and their property forfeited as well. This "corruption of blood" often inflicted grave injustice upon innocent persons. Hence the provision that in the United States the conviction of a traitor must not carry any penalty beyond the person and property of the offender himself.

ARTICLE IV

SECTION 1. FULL FAITH AND CREDIT SHALL BE GIVEN IN EACH STATE TO THE PUBLIC ACTS, RECORDS, AND JUDICIAL PROCEEDINGS OF EVERY OTHER STATE.

This provision is the basis for what is known as interstate comity. It is one of the nationalizing clauses of the constitution. Without it we should probably have had a situation approaching legal chaos among the states. In general, the provision means that where any judicial proceeding is completed in one state, as respects a matter within the jurisdiction of that state, such judicial proceeding must be given full faith and credit by the courts of every other state. Or, to put it in another way, the judgments and decrees of the courts in one state must be given, in other states, the same force and effect to which they are entitled in the state where they were rendered.

For example, if a plaintiff obtains an award of damages from a New Hampshire court on some matter which is within the jurisdiction of such court, he may present his judgment to a court in Virginia (assuming that the defendant has moved to the latter state) and may have his judgment enforced there. A marriage, if valid in the state where it was performed, is valid in all other states. A divorce, if properly granted in one state, must be recognized by all the other states, even if a divorce on similar grounds would not have been granted by them.

But recognition does not have to be given to the judgments or judicial proceedings of a state unless they have been obtained

in good faith and on matters within the jurisdiction of the state concerned. A divorce obtained by fraud or collusion, or by non-residents of the state, is not entitled to full faith and credit anywhere else.

> AND THE CONGRESS MAY BY GENERAL LAWS PRESCRIBE THE MANNER IN WHICH SUCH ACTS, RECORDS AND PROCEEDINGS SHALL BE PROVED, AND THE EFFECT THEREOF.

Congress has, by general law, stipulated that judgments and decrees of state courts shall be proved by the signature of the clerk and the seal of the court concerned. The judge must also certify that the attestation is in due form. The laws of one state are authenticated for use in another state by the signature of the secretary of state and the official seal.

> *SECTION* 2. THE CITIZENS OF EACH STATE SHALL BE ENTITLED TO ALL PRIVILEGES AND IMMUNITIES OF CITIZENS IN THE SEVERAL STATES.

Of all the provisions in the constitution, this is perhaps the most definitely nationalizing in its intent, but the loose wording gave rise to much controversy during the years preceding the Civil War. In various places (as well as in this provision) the constitution uses the word "citizen" but nowhere does it define the term. It speaks of "citizens of each state," "citizens in the several states," and "citizens of the United States"; but it gives no hint as to what difference, if any, was assumed to exist between these several varieties of citizens. Much litigation would have been avoided if the Committee on Style at the Convention of 1787 had taken the trouble to explain just what was meant by a "citizen." Was it in mind that a person could be a citizen of the United States without being a citizen of any state? Or a citizen of a state without being a citizen of the United States?

Those who upheld the doctrine of state rights during the years preceding the Civil War contended that citizenship of the United States was merely an incident of state citizenship, and that not every citizen of a state became ipso facto a citizen of the United States. Political philosophers in the Northern states argued with equal vigor that no one could be a citizen of any state without being a citizen of the United States. In the Dred Scott case (1856) the Supreme Court sided with the dual citizenship group. "It does not by any means follow," said Chief Justice Taney in this decision, "because a man has all the rights and privileges of a citizen of a state, that he must be a citizen of the United States." There the controversy rested until after the Civil War, when the Fourteenth Amendment reversed the court's decision and provided for unified citizenship by declaring that "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." (See pp. 154–155.)

A PERSON CHARGED IN ANY STATE WITH TREASON, FELONY, OR OTHER CRIME, WHO SHALL FLEE FROM JUSTICE, AND BE FOUND IN ANOTHER STATE, SHALL ON DEMAND OF THE EXECUTIVE AUTHORITY OF THE STATE FROM WHICH HE FLED, BE DELIVERED UP, TO BE REMOVED TO THE STATE HAVING JURISDICTION OF THE CRIME.

This section provides for interstate extradition. Inasmuch as the constitution requires that a man shall be tried in the state where his offence is alleged to have been committed, some provision seemed necessary for the return of fugitives from justice. Accordingly, each state is placed under obligation to permit the extradition of such fugitives. The procedure is by means of a requisition from the governor of the state in which the crime was alleged to have been committed, ad-

dressed to the governor of the state in which the accused person has taken refuge. When this requisition is presented in due form, the latter issues an order for the removal of the prisoner as demanded.

Although the wording of this clause is mandatory, it has not proved to be so in practice. The wording is "shall be delivered up," but when a governor declines to surrender a fugitive from justice, there is no way of compelling him to act as the constitution requires. The federal courts will not order him to surrender a fugitive and the courts of his own state cannot. Ordinarily, however, a governor does not decline to comply if he finds that the requisition is made out in regular form and is properly presented.

As respects fugitives from justice who escape to a foreign country, there is provision for extradition based on treaties; but no surrender of such fugitives can take place unless the offence is one which the treaty enumerates as extraditable, and when a person is extradited from a foreign country for one crime he may not be placed on trial for a different crime. In the case of extradition between the states, this limitation does not apply. The procedure in extradition from a foreign country is to send the request through the Department of State at Washington, accompanied by various documents showing the nature of the charge. These papers are then forwarded to the foreign country through the regular diplomatic channels.

> NO PERSON HELD TO SERVICE OR LABOR IN ONE STATE, UNDER THE LAWS THEREOF, ESCAPING INTO ANOTHER, SHALL, IN CONSEQUENCE OF ANY LAW OR REGULATION THEREIN, BE DISCHARGED FROM SUCH SERVICE OR LABOR, BUT SHALL BE DELIVERED UP ON CLAIM OF THE PARTY TO WHOM SUCH SERVICE OR LABOR MAY BE DUE.

This is now an obsolete provision. It was put into the constitution at the demand of certain Southern states, and was designed to repeal a provision of the common law, as interpreted by the English courts, to the effect that when a slave reached free soil he became a free man. In 1772 the Court of King's Bench in England had held that a slave brought by his master from one of the Southern states to England became free on arrival in the latter country. The delegates from the Southern states at the Constitutional Convention of 1787 were afraid that this rule, unless it were expressly abrogated, might encourage the wholesale escape of fugitives from the South into Northern states where they would become free.

Shortly after the constitution went into effect, Congress passed the first Fugitive Slave Law, and in 1850 it enacted a more stringent statute of the same kind. These laws not only provided for the surrender of fugitive slaves, but imposed a penalty upon anyone assisting a slave to escape from his owner. They caused a great deal of bitterness during the years preceding the Civil War, especially because various Abolitionist organizations in the North operated an "underground railroad" by which slaves were aided in escaping.

SECTION 3. NEW STATES MAY BE ADMITTED BY THE CONGRESS INTO THIS UNION;

In 1787 everyone appreciated the fact that new states would presently be admitted to the Union from the Northwest Territory. Indeed the Northwest Ordinance had already made provision for the admission of a territory whenever the population should reach sixty thousand. The terms of admission, however, were left by the constitution to the discretion of Congress, hence Congress may exact, as the price of a new state's admission to the Union, whatever conditions it thinks fit. In 1894, for example, Congress declined to admit Utah as a state until polygamous marriages had been abolished.

Later it rejected the application of Arizona to statehood until a certain provision of the state constitution (relating to the recall of judges) should be eliminated. Once a state is admitted, however, no new conditions can be imposed upon it. Nor can any state be placed under a permanent disability which is not imposed on all the other states. All members of the Union must have the same obligations to the federal government, to one another, and to citizens of the United States.

The process of admission to statehood is relatively simple. The first step is the presentation of a petition to Congress from the people of the territory asking that they be organized as a state of the Union. If Congress regards this petition favorably, it passes an enabling act authorizing the people through a constitutional convention to draw up a state constitution. This constitution, having been accepted by the people of the state, is then submitted to Congress, whereupon by resolution of that body the territory is declared to be a state and its representatives are admitted to the national legislature.

> BUT NO NEW STATE SHALL BE FORMED OR ERECTED WITHIN THE JURISDICTION OF ANY OTHER STATE; NOR ANY STATE BE FORMED BY THE JUNCTION OF TWO OR MORE STATES, OR PARTS OF STATES, WITHOUT THE CONSENT OF THE LEGISLATURES OF THE STATES CONCERNED AS WELL AS OF THE CONGRESS.

The constitution places no restrictions upon the creation of new states except as above. In only two cases has a new state been formed from territory already within the jurisdiction of an earlier state. The first was the case of Maine, which formed a part of Massachusetts down to 1820. To this separation Massachusetts gave its consent. The second case was that of West Virginia, the people of which sided with the North

during the Civil War while the rest of the state seceded with the South. Congress decided that in this instance the loyal portion of the state might give consent for the whole. There has been no instance of the formation of any state by the junction of two or more states, or by consolidating parts of states, either with the consent of the legislature or without.

> THE CONGRESS SHALL HAVE POWER TO DISPOSE OF AND MAKE ALL NEEDFUL RULES AND REGULATIONS RESPECTING THE TERRITORY OR OTHER PROPERTY BELONGING TO THE UNITED STATES;

The United States already had an endowment of territory when the constitution was adopted; namely, the Northwest Territory which had been ceded to it by the states. Subsequently it obtained a much larger tract of land by the Louisiana Purchase from France. Other tracts were then obtained in various ways — Florida, the Southwest and Pacific slope, Alaska, and the insular possessions (Porto Rico, the Philippines, etc.).

Under the constitution, the power of Congress over all such territory is made absolute and complete. In the older territories regular territorial governments were set up, all of them conforming to the same general model. As a rule this government consisted of a governor appointed by the President and a legislature elected by the people of the territory. Every inch of territory within the continental boundaries of the United States has now been erected into states; but Alaska, Hawaii, Porto Rico, the Philippines, the Virgin Islands, and the Canal Zone continue to be governed by the federal authorities under this constitutional provision.

> AND NOTHING IN THIS CONSTITUTION SHALL BE SO CONSTRUED AS TO PREJUDICE ANY CLAIMS OF THE UNITED STATES, OR OF ANY PARTICULAR STATE.

Not all of the claims of the various states to western lands had been settled at the time the constitution was framed. Eleven states had ceded all their claims to the federal government; that is, to the government of the Confederation; but Georgia and North Carolina had not yet joined in this cession. It seemed advisable to stipulate, therefore, that the establishment of congressional jurisdiction over the territories should not be regarded as prejudicing the claims of any individual state.

SECTION 4. THE UNITED STATES SHALL GUARANTEE TO EVERY STATE IN THIS UNION A REPUBLICAN FORM OF GOVERNMENT,

Some members of the Constitutional Convention thought this guarantee quite unnecessary. Just what they meant by "a republican form of government," moreover, they did not stop to explain; but it is reasonable to assume that what they had in mind was the general type of government existing in the thirteen states at the time the constitution was drafted. At any rate that is what the Supreme Court has ruled on more than one occasion. "No particular form of government," it declared in one of its decisions, "is designated as republican. All the states had governments when the constitution was adopted. These governments the constitution did not change. Thus we have unmistakable evidence of what was republican in form without the meaning of the term employed by the constitution."

So long, therefore, as a state continues to maintain any reasonable approach to a government which derives its powers from the body of the people, it is deemed to be republican in form. Nevertheless there has been a good deal of litigation on this clause of the constitution. All sorts of things have been alleged to be unrepublican and un-American. For example, the making of state laws by means of the initiative

and referendum, the recall of state officers, civil service reform, the use of proportional representation, and even woman suffrage have been assailed in the courts as departures from a republican form of government. In all such cases, however, the Supreme Court has adhered to the general principle above set forth.

AND SHALL PROTECT EACH OF THEM AGAINST INVASION;

This imposes upon the United States an obvious duty. Some of the states thought such an explicit guarantee to be essential. Their feeling on this point grew out of the experiences of the Revolutionary War, when a few of the states sometimes had to bear the brunt of invasion and attack without assistance from either the Continental Congress or the other states.

AND ON APPLICATION OF THE LEGISLATURE, OR OF THE EXECUTIVE (WHEN THE LEGISLATURE CANNOT BE CONVENED) AGAINST DOMESTIC VIOLENCE.

In order to intervene for the protection of a state against invasion, the government of the United States does not require an invitation; but in the case of domestic violence within a state it has no right to intervene unless asked to do so by the state legislature (if the legislature be in session) or by the governor if the legislature is not sitting.

The states from the outset have laid stress upon this distinction, and have been inclined to resent all unrequested intervention on the part of the federal authorities. Yet on more than one occasion the national government has intervened unasked. The most notable instance occurred during the Pullman strike of 1894, when President Cleveland sent United States troops into Illinois in spite of a vigorous protest made by the state authorities. Cleveland justified this action

on the ground that certain federal functions were being interfered with — for example, the carrying of the United States mails and the regulation of interstate commerce. The Supreme Court later upheld the President's action. It confirmed the right of the United States to intervene anywhere, by the use of federal troops if necessary, in cases where domestic violence interfered with the proper performance of the functions given to the federal government by the constitution.

ARTICLE V

THE CONGRESS, WHENEVER TWO-THIRDS OF BOTH HOUSES SHALL DEEM IT NECESSARY, SHALL PROPOSE AMENDMENTS TO THIS CONSTITUTION, OR, ON THE APPLICATION OF THE LEGISLATURES OF TWO-THIRDS OF THE SEVERAL STATES, SHALL CALL A CONVENTION FOR PROPOSING AMENDMENTS, WHICH, IN EITHER CASE, SHALL BE VALID TO ALL INTENTS AND PURPOSES, AS PART OF THIS CONSTITUTION, WHEN RATIFIED BY THE LEGISLATURES OF THREE-FOURTHS OF THE SEVERAL STATES, OR BY CONVENTIONS IN THREE-FOURTHS THEREOF, AS THE ONE OR THE OTHER MODE OF RATIFICATION MAY BE PROPOSED BY THE CONGRESS;

The makers of the constitution foresaw that the need for amendments would arise, and it was their opinion that the process of amendment should not be made too difficult. Hence they provided for alternative methods, including one method whereby amendments might be proposed and ratified without any action on the part of Congress. As you read the foregoing provision of the constitution you may think it rather complicated, but it is in fact a model of conciseness and clarity. If you think otherwise, try to redraft it in different words.

The constitution can be amended in any one of four ways: *First*, a proposal by Congress and a ratification by the legislatures of three-fourths of the states. *Second*, a proposal by Congress and a ratification by conventions called in three-fourths of the states. *Third*, a proposal by two-thirds of the state legislatures and a ratification by three-fourths of the

same. *Fourth*, a proposal by two-thirds of the state legislatures and a ratification by conventions called in three-fourths of the states. As a matter of fact, only the first method has ever been used. Nineteen amendments have been adopted by that method and none by any other.

Various questions arise in connection with constitutional amendments. For example, does the action of Congress in proposing an amendment require the President's signature? The answer is *No*. The Supreme Court has held that his signature is not required. Again, may Congress impose a time limit during which three-fourths of the states shall accept or reject a proposed amendment? The answer is *Yes*. In the case of the Eighteenth Amendment, for example, Congress provided that ratification must take place in three-fourths of the states within seven years from the date of its submission to them; otherwise the amendment would be deemed to have been rejected.

Furthermore, when a state legislature has ratified a proposed constitutional amendment, may it later (before the necessary three-fourths have assented) revoke its action and withdraw its ratification? Congress by a joint resolution has declared that this cannot be done. On the other hand, if a state legislature refuses to ratify, and then at a later date changes its mind, within the time limit, the ratification is effective. When a state legislature votes to ratify an amendment, its action cannot be vetoed by the governor.

Finally, is it permissible for a state legislature to submit the matter of ratification to the voters of the state for their decision, in the form of a referendum? The answer again is *Yes*. But the legislature itself must take formal action after the people have expressed themselves. The constitution provides for ratification by state legislatures, not by state electorates.

No limitations are placed by the constitution on amend-

ments except in two instances. First, no state without its own consent can be deprived of its equal representation in the Senate. Second, no state can be divided, nor can any two states be combined, without the consent of the legislatures concerned.

There is also, in the original constitution, a temporary restriction with reference to the importation of negro slaves, as follows:

> PROVIDED THAT NO AMENDMENT WHICH MAY BE MADE PRIOR TO THE YEAR ONE THOUSAND EIGHT HUNDRED AND EIGHT SHALL IN ANY MANNER AFFECT THE FIRST AND FOURTH CLAUSES IN THE NINTH SECTION OF THE FIRST ARTICLE; AND THAT NO STATE, WITHOUT ITS CONSENT, SHALL BE DEPRIVED OF ITS EQUAL SUFFRAGE IN THE SENATE.

It will be recalled that Congress was given power over interstate commerce, but subject to the restriction that the importation or migration of persons whom the states should think fit to admit should not be curtailed prior to the year one thousand eight hundred and eight; nor should a head tax above a certain amount be placed upon such persons. The Southern states were afraid that these restrictions, once the Constitution was adopted, might be taken out by an amendment, hence they insisted on a further stipulation that no amendment to these clauses should be made prior to the year mentioned.

ARTICLE VI

ALL DEBTS CONTRACTED AND ENGAGEMENTS ENTERED INTO, BEFORE THE ADOPTION OF THIS CONSTITUTION, SHALL BE AS VALID AGAINST THE UNITED STATES UNDER THIS CONSTITUTION, AS UNDER THE CONFEDERATION.

Here is a guarantee of good faith given to the world. Prior to 1777 there had been various instances, in minor European countries, of changes in the form of government being made a justification for the repudiation of debts. It seemed desirable to give assurance, both at home and abroad, that the United States intended nothing of that sort; and that the adoption of a new constitution would not be used as a subterfuge to repudiate debts contracted, or engagements entered into, by the government of the Confederation. The total debt of the United States at this time was relatively small; hardly more than fifty million dollars, of which less than one quarter was owing to foreign countries. America owed Europe about eleven millions at the time the constitution was adopted, and Europe owed America about eleven billions when the World War came to a close.

THIS CONSTITUTION, AND THE LAWS OF THE UNITED STATES WHICH SHALL BE MADE IN PURSUANCE THEREOF; AND ALL TREATIES MADE, OR WHICH SHALL BE MADE, UNDER THE AUTHORITY OF THE UNITED STATES, SHALL BE THE SUPREME LAW OF THE LAND; AND THE JUDGES IN EVERY STATE SHALL BE BOUND THEREBY, ANY THING IN THE CONSTITUTION

OR LAWS OF ANY STATE TO THE CONTRARY NOTWITHSTANDING.

This is one of the most admirable clauses of the whole constitution. It rings strong and clear, and it means exactly what it says. No words could more plainly embody the principle that the Constitution of the United States and the laws made in pursuance of its provisions, together with all treaties concluded by its authority, stand superior to state constitutions, state laws, municipal ordinances, and all other enactments of any kind whatsoever. The Constitution of the United States is the supreme law of the land, and all laws or treaties made in consonance with its provisions are equally supreme.

And the judges in every American court, federal or state, high or low, are placed under obligation to support the constitution, including this provision of it. They take an oath to do so on their acceptance of office, as provided in the next section.

THE SENATORS AND REPRESENTATIVES BEFORE MENTIONED, AND THE MEMBERS OF THE SEVERAL STATE LEGISLATURES, AND ALL EXECUTIVE AND JUDICIAL OFFICERS, BOTH OF THE UNITED STATES AND OF THE SEVERAL STATES, SHALL BE BOUND BY OATH OR AFFIRMATION, TO SUPPORT THIS CONSTITUTION;

This provision overlooks nobody. No one can hold any office in the United States without taking an oath or affirmation to support the national constitution. The language of this provision is so broad that it covers every branch of national, state, or local administration. Every state or municipal officer takes a double oath, first to uphold and defend the constitution and laws of the United States; and, second, to support and defend the constitution and laws of his own state.

BUT NO RELIGIOUS TEST SHALL EVER BE REQUIRED AS A QUALIFICATION TO ANY OFFICE OR PUBLIC TRUST UNDER THE UNITED STATES.

In 1787 it was the practice of some states to require all officers to take an oath which virtually served as a religious test. But the makers of the constitution deemed it desirable to forbid the imposition of any such requirement in the case of federal officeholders. On the other hand, they did not feel justified in extending this prohibition to the various states, which were left free to provide religious tests if they so desired. As a matter of fact, practically all the states have long since abolished religious tests for office by the terms of their own state constitutions.

ARTICLE VII

THE RATIFICATION OF THE CONVENTIONS OF NINE STATES SHALL BE SUFFICIENT FOR THE ESTABLISHMENT OF THIS CONSTITUTION BETWEEN THE STATES SO RATIFYING THE SAME.

The constitution was not submitted to the people of the United States for acceptance or rejection at the polls. It was not submitted to the legislatures of the various states for acceptance or rejection by them. There was a feeling that either of these methods would result in a failure of the states to ratify the constitution. The people as a whole would not understand the document in all its implications, while the legislatures would be jealous of their own prerogatives, some of which the constitution proposed to take away.

Hence the delegates at Philadelphia adopted the expedient of providing that special conventions should be called in each state to discuss the provisions of the constitution and to decide for or against it. This arrangement was regarded by some political leaders as a breach of faith, inasmuch as the old Articles of Confederation had provided that no alteration should ever be made in the federal system unless agreed to by the Congress of the Confederation and confirmed by the legislatures of every state. Here was a proposal to supersede the Articles of Confederation in an unauthorized way, namely, by the action of certain delegates and conventions in nine states rather than by the action of the Congress confirmed by the legislatures in the whole thirteen.

Opponents of the new constitution branded this *coup d'état* as revolutionary, which in fact it was. Nevertheless the con-

ventions were called in the various states, and one after another they ratified the constitution — although in some cases by a narrow margin. The members of these conventions were elected by popular vote, but in only one of the states was voting on a manhood suffrage basis and in most of them very little interest was taken in the elections.

Three states ratified the constitution within a few weeks — Delaware, Pennsylvania, and New Jersey. Georgia followed a little later. But serious obstacles thereupon appeared in some of the larger states, notably Massachusetts, Virginia, and New York. In all three of these commonwealths the campaign of opposition grew noisy and bitter. Virginia, and Massachusetts finally, came through with votes to spare, but in New York the constitution was ratified by a majority of only three votes in the state convention. Thus by midsummer of 1788 the necessary nine ratifications had been secured. North Carolina did not give assent till the autumn of 1789, and Rhode Island delayed until the spring of 1790.

Even the most optimistic among the framers of the new constitution had not ventured to hope for ratification by the entire thirteen states. They felt that if nine states would come in, a start could be made and the others brought to see the light in time. Hence they provided that the constitution should be established "between the states so ratifying the same." These words furnished groundwork for the contention of the Calhoun group that the constitution was an agreement among the states and was not ordained by the people as its preamble declares.

> DONE IN CONVENTION BY THE UNANIMOUS CONSENT OF THE STATES PRESENT THE SEVENTEENTH DAY OF SEPTEMBER IN THE YEAR OF OUR LORD, ONE THOUSAND SEVEN HUNDRED AND EIGHTY SEVEN AND OF THE INDEPENDENCE OF THE UNITED STATES OF AMERICA THE

TWELFTH. IN WITNESS WHEREOF WE HAVE HEREUNTO SUBSCRIBED OUR NAMES,

This declaration is somewhat misleading. The constitution was not "done in convention by unanimous consent of the states present," or by unanimous consent of the delegates. All in all, sixty-five delegates were appointed by the various states to sit in the Constitutional Convention. Of these only fifty-five ever took their seats at Philadelphia. Of the fifty-five, only forty-two were present when the signing took place, and of the forty-two who were present, only thirty-nine affixed their signatures. In other words, the constitution obtained the signatures of about half the entire body of appointed delegates.

Nevertheless, twelve states were represented by the signature of at least one delegate. But some of those who signed the constitution did so with great reluctance and took occasion to say so when the time for putting their names on the document arrived. Alexander Hamilton, the only delegate present from New York, reminded the convention that "no man's opinions were more remote from the new constitution than his own." He was ready to accept it, he said, because no plan of government, in his judgment, could be worse than that provided by the Articles of Confederation, which formed the only practicable alternative.

At any rate, having finished their work and signed the constitution, the delegates took dinner together and departed for their several homes, having first provided that copies of the document should be laid before the Congress of the Confederation for the action indicated, namely the sending of it to the various states to be ratified.

AMENDMENTS

AMENDMENTS

ARTICLE I

CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF;

The Church of England had been "established" in several of the colonies and this recognition as an official church was continued in some of the states after the winning of independence. But by Thomas Jefferson's famous Statute for Religious Freedom in Virginia (1784), the Church of England had been disestablished there, and Virginia's example was followed by other states although not by all of them. In 1787 the question of disestablishment was still a bitterly controversial one and the members of the Constitutional Convention had enough hot coals to handle without this one. So they ignored the whole matter of established religions. This evasion disturbed Jefferson greatly. He regarded the omission of a safeguard for religious freedom as an outstanding defect of the new Constitution and did not become reconciled until assured by Madison and others that such a provision would be added by amendment.

In accordance with this promise the rule against any establishment of religion was incorporated in the first amendment. This amendment places a limitation on Congress, not upon the states. There is nothing in it to forbid a state to make an establishment of religion, and there are a few states of the Union which virtually do this by giving public money to sectarian schools.

Again, while the First Amendment forbids interference with "the free exercise" of religion, this does not mean that Con-

gress must tolerate, under the guise of religious exercises, any practices which are contrary to public policy or public morals. The Supreme Court has held, for example, that polygamy can be prohibited notwithstanding the fact that it is in accordance with the creed of a religious body.

OR ABRIDGING THE FREEDOM OF SPEECH,

The right to freedom of speech is a relative right. It is a right which must be exercised within reason and not to the detriment of others. Freedom of speech cannot be properly claimed to a degree where it negatives or impairs other constitutional provisions. For example, Congress is given power to "raise and support armies." Obviously it was not intended that the right to freedom of speech should be usable in a way that would impede or obstruct Congress in its care for the national defence. Thus the Espionage Act of 1917 placed limitations upon freedom of speech in the matter of interference with the war program, such as speaking or writing with intent to persuade men from serving in the army or buying war bonds. The Supreme Court upheld the provisions of this law notwithstanding its superficial repugnance to the constitutional guarantee of free speech, on the ground that one provision of the constitution could not be adduced to defeat the purposes of another.

OR OF THE PRESS;

By freedom of the press the framers of the constitution probably had in mind Blackstone's definition of it as the right to publish anything that is not improper, mischievous, or illegal. Nevertheless the Constitution of the United States intends that the national government shall have the means to secure its own preservation. Accordingly it is not required to tolerate, under the guise of a free press, seditious acts which seek to imperil the government's existence. Hence the Sedi-

tion Law of 1798 forbade the publication of matters defaming the government or bringing its officers into disrepute was upheld by the Supreme Court. The National Defence Act of 1916 provided that any newspaper published in violation of its provisions should be excluded from the mails. Here, again, the Supreme Court upheld the action of Congress. The court's decision pointed out that the constitutional guarantee for freedom of the press cannot be stretched to secure the immunity of those who encourage violations of the law. On the other hand it does protect those who confine themselves to demands for the modification or repeal of existing laws by lawful methods. The court's point of view was concisely stated in these words: "The constitution was adopted to preserve our government, not to serve as a protecting screen for those who, by claiming its privileges, seek to destroy it."

OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE,

The right to public meeting is a very old one. It was claimed in mediaeval England. But the gathering must be of a peaceable character, hence laws and police regulations which require a permit for public meetings have been held not to constitute a denial of this right. Assemblages of people are not deemed to be "peaceably" conceived if they are held in a way or at a time that menaces the public safety, health, morals, or convenience.

AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

The right of petition is also a common law right. In England the famous Declaration of Rights submitted by parliament to the crown in 1687 boldly asserted this right of petition, and so did the colonial Declaration of Rights in 1765. Mention was also made of it in the Declaration of Independence. "We have petitioned for redress in the most humble terms:

our repeated petitions have been answered only by repeated injury." Under this guarantee of a right to petition the government, any citizen has the right to request from Congress such legislation as will afford him the "redress of grievances" that he desires.

ARTICLE II

A WELL REGULATED MILITIA, BEING NECESSARY TO THE SECURITY OF A FREE STATE, THE RIGHT OF THE PEOPLE TO KEEP AND BEAR ARMS, SHALL NOT BE INFRINGED.

This article is not to be taken too literally. By no means does it give everybody a right to keep and carry pistols or shotguns. The right of the people "to keep and bear arms" is to be read in keeping with the context, which indicates the purpose of the right, namely, to secure the maintenance of a well-regulated militia. In general the whole provision means that Congress may not pass any law disarming the militia of the several states. When a state legislature authorizes the keeping and bearing of arms by certain of its people, the national government is debarred from interfering with such action. This amendment to the constitution was demanded by the states as a safeguard against a future usurpation of military power by the national government. It ensures to the states a means of resistance in case Congress should ever attempt to oppress them by using federal troops.

ARTICLE III

NO SOLDIER SHALL, IN TIME OF PEACE BE QUARTERED IN ANY HOUSE, WITHOUT THE CONSENT OF THE OWNER, NOR IN TIME OF WAR, BUT IN A MANNER TO BE PRESCRIBED BY LAW.

The billeting of soldiers in private houses was a grievance both in England and in colonial America. Back in the days of

the Stuarts there was much complaint in parliament against the quartering of troops on the people in time of peace, and this complaint was incorporated among the provisions of the Petition of Rights in 1628. Examples of such billeting were also common in America before the Revolution. Indeed there was a statute of the English parliament which required the colonies to provide quarters and subsistence for British officers and soldiers on service in America. It will be observed, however, that the Third Amendment does not forbid all billeting of troops but merely insists that this shall not be done in time of peace without the consent of the owner, and that if it is done in time of war it shall be in a manner prescribed by law.

ARTICLE IV

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OR AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED, AND THE PERSONS OR THINGS TO BE SEIZED.

The right of search had been grossly abused both by soldiers and civilian officers prior to the Revolution, particularly by the issue of documents known as Writs of Assistance. These writs gave sheriffs, constables, and soldiers the right to enter and search at will, and commanded all citizens to assist in such searches when called upon. The Fourth Amendment was designed to prohibit the issue of such writs or anything akin to them. But it does not forbid all searches — only *unreasonable* ones. Thus it leaves to the courts the determination of what searches are permissible.

Under ordinary circumstances, the courts have held, a search

or seizure is not to be made without a search warrant, which warrant must not be issued unless it conforms to the two requirements above stated, namely, a complaint on oath, and a specific designation of the place to be searched and of the persons or things to be seized. But a search warrant is not in all cases necessary in order to enable officers of the law to enter, search, and seize. Nor does this provision of the constitution apply to the states. It is a restriction upon federal officers and federal courts only. But most of the states have a similar provision in their own constitutions.

ARTICLE V

NO PERSON SHALL BE HELD TO ANSWER FOR A CAPITAL, OR OTHERWISE INFAMOUS CRIME, UNLESS ON A PRESENTMENT OR INDICTMENT OF A GRAND JURY,

This provision likewise is a restriction upon the federal courts only. A federal grand jury consists of a designated number of persons called together by the United States marshal of the district court in order that complaints may be presented to them. The United States attorney presents the facts and the grand jury may return an indictment if it finds that a prima facie case has been made out against an accused person. Or, it may refuse to return an indictment. The proceedings before a grand jury are of an ex parte character, for the accused is not permitted to present his defence or to be represented by counsel.

A presentment differs from an indictment in that it is a general finding not necessarily directed against any individual or corporation. A grand jury may make a presentment at any time dealing with the maintenance of law and order, the efficiency of the judicial officers, the conditions existing in federal prisons, and so on.

When a person is indicted by a grand jury, he is placed on trial in due course before another jury, known as a trial jury; but if the evidence does not appear to be sufficient for conviction the United States attorney may recommend to the court that this indictment be dropped, dismissed, or placed on file. To drop further proceedings he usually enters what is known as a *nolle prosequi*, thus "nol-prossing" the case, as it is popularly called.

Inasmuch as grand juries are not in session at all times, the federal laws provide that an accused person shall first of all be brought before a United States commissioner, of whom there is one in each federal district. This commissioner decides whether the accused person shall be held for the grand jury or allowed to go. Thus there are three steps in the prosecution of an offender under the federal laws. First, a hearing before the district commissioner; second, a presentation of the case to the grand jury; and finally, trial in the district court.

> EXCEPT IN CASES ARISING IN THE LAND OR NAVAL FORCES, OR IN THE MILITIA, WHEN IN ACTUAL SERVICE IN TIME OF WAR OR PUBLIC DANGER;

Cases arising in the land or naval forces or in the militia when in actual service, in time of war or public danger, are tried by court martial. Courts martial do not use grand juries. To place a person on trial before a court martial the first step is for an officer to make specific charges in writing. These charges are presented to the commanding officer and he determines whether a court martial shall be convened.

> NOR SHALL ANY PERSON BE SUBJECT FOR THE SAME OFFENCE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIMB;

This is the rule against second jeopardy. It means that when an accused person has been indicted, and put on trial, and actually tried, and a verdict rendered — that when he has gone through this experience he must not be compelled, against his will, to undergo it again for the same offence. Hence when a prisoner has been formally acquitted in the federal courts he must not be put on trial the second time for the same offence, no matter what happens — not even if new and conclusive evidence of his guilt be found after his acquittal. An acquittal disposes of an offence for all time. But if an accused person is convicted, he can of his own accord ask for a new trial and such requests may be granted by the courts. A new trial after conviction does not constitute a "second" jeopardy.

> NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF,

An accused person is permitted to be a witness, if he so desires, but he cannot be placed on the witness stand under compulsion. A person who is not on trial, moreover, may refuse to answer any question, when called before a federal court to give evidence, on the ground that his answer might incriminate him.

The rule against compelling an accused person to furnish testimony against himself is construed strictly. A confession obtained by force is void. An indictment based upon testimony extracted from an accused person before the grand jury is void. Hence it is the custom, when persons under suspicion are brought before a grand jury, for the district attorney to ask that they waive their constitutional immunity from later prosecution in case their testimony proves self-incriminating. A person appearing before a grand jury may decline to waive this immunity.

NOR BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW;

The Declaration of Independence spoke of the right to "life, liberty, and the pursuit of happiness." The constitution changes this to "life, liberty, or property." This is an indication of the psychological change that had been wrought in the American public mind during the intervening years. The country had become more conservative in its point of view, more solicitous of property-rights, more Hamiltonian and less Jeffersonian in its outlook.

What is "due process of law"? To determine the meaning of these four words has given the federal courts no end of trouble during the past hundred years, and even to-day they have not succeeded in making it absolutely clear. No other phrase in the constitution has proved so elusive, but in a general way the requirement of "due process" means that there must be, in all actions to deprive a man of his life, liberty, or property, an observance of those judicial forms and usages which by general consent have become the essentials of a fair judicial proceeding.

In a word, due process of law is a synonym for fair play. It means the sort of process which hears before it condemns; which proceeds by inquiry, and renders judgment only after ascertaining the facts. But it does not necessarily involve a trial by jury, or even a trial in open court. Questions involving deprivations of property are sometimes decided by administrative officers, as for example the sale of lands for failure to pay taxes. All legal proceedings which are in furtherance of the public good, and which preserve the principles of liberty and justice, are held to be in accordance with the requirement as to due process of law. It will be noted that this same requirement is repeated in the Fourteenth Amendment as a limitation upon the states.

NOR SHALL PRIVATE PROPERTY BE TAKEN FOR PUBLIC USE, WITHOUT JUST COMPENSATION.

This clause limits the right of eminent domain. In general the right of a nation or state to take private property for public use is eminent or paramount. It is a right that transcends private ownership. It is inherent in the nature of sovereignty that a government shall have the right to acquire private property for an essential public use even when the owner of the property objects to giving it up. Otherwise a government could not perform its functions, because private property is needed from time to time for fortifications, navy-yards, post offices, customs houses, schoolhouses, parks, highways, and so on.

In early England it was the custom to take private property for the use of the crown without giving the owner any compensation at all, much less just compensation. In other words the king had the right of purveyance, as it was called, and this right extended to the taking of land, buildings, cattle, grain, — anything that the king wanted. Of course grave abuses arose from the exercise of this right. In the United States the right of eminent domain is preserved, but with the important limitation that the government is not permitted to take private property for public use without just compensation to the owner. This compensation is usually fixed by amicable agreement between the government and the private owner concerned; but failing such an agreement the matter goes to the courts and the amount of compensation is determined there by a jury. A similar provision as to just compensation appears in the constitutions of all the states as a limitation upon land-taking by state and local governments. Public utilities, such as railroads, street railways, and so forth, are also given the right to take private property when necessary; but always subject to the same requirement as respects compensation to the private owner.

ARTICLE VI

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL ENJOY THE RIGHT TO A SPEEDY AND PUBLIC TRIAL, BY AN IMPARTIAL JURY OF THE STATE AND DISTRICT WHEREIN THE CRIME SHALL HAVE BEEN COMMITTED, WHICH DISTRICT SHALL HAVE BEEN PREVIOUSLY ASCERTAINED BY LAW,

This amendment, which here applies to the federal courts only, is intended to obtain for every accused person a prompt and public trial before a jury chosen from the district in which the crime is alleged to have been committed. It guarantees trial by jury in all criminal cases before the federal courts.

AND TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION;

A person accused in the federal courts is entitled by this provision to have a copy of the indictment which has been returned against him. He is entitled to have this before his trial occurs, and in adequate time to prepare his defence. If the accused person regards the indictment as insufficiently specific, the rules of the federal courts permit him, through his counsel, to obtain a bill of particulars setting forth the time, place, and manner of the offence with which he is charged.

TO BE CONFRONTED WITH THE WITNESSES AGAINST HIM;

The testimony in criminal trials must be given orally. Sworn statements presented in writing must not be received. To this rule, however, there are some exceptions. At the time the constitution was framed, it was a rule of law that a death-bed statement could be admitted as evidence in writing, when the maker of the statement had subsequently died. The Supreme Court has held that such statements may be received

in the federal courts, notwithstanding the requirement as to confrontation. It has also held that where a witness appears in open court and gives evidence at the first trial of an accused person, this testimony may be presented in writing at the second trial in case the witness has died between the two trials.

> TO HAVE COMPULSORY PROCESS FOR OBTAINING WITNESSES IN HIS FAVOR, AND TO HAVE THE ASSISTANCE OF COUNSEL FOR HIS DEFENCE.

The prosecution has means of compelling the attendance of its own witnesses; and it is only fair that accused persons should be guaranteed the same privilege. When the defendant's counsel, therefore, makes application for an order compelling the attendance of witnesses whom he wishes to examine, the court is under obligation to issue such orders in the form of summonses or warrants as the case may be.

Ordinarily the accused person secures his own attorneys, but if for any reason he is unable to do so (for example, through lack of funds), the court is under obligation to provide him with counsel. This is done at the public expense.

ARTICLE VII

> IN SUITS AT COMMON LAW, WHERE THE VALUE IN CONTROVERSY SHALL EXCEED TWENTY DOLLARS, THE RIGHT OF TRIAL BY JURY SHALL BE PRESERVED,

This means that in all civil suits at common law in the federal courts the plaintiff and defendant are each entitled to claim the right of a jury trial; but this rule does not apply to civil controversies arising under the provisions of statutory law, nor to proceedings in equity such as petitions for an injunction. Moreover it does not prevent the waiving of jury trial by an agreement between both parties to the suit.

This practice of waiving jury trial by mutual consent has become very common in the federal courts, particularly where small amounts are involved.

> AND NO FACT TRIED BY A JURY, SHALL BE OTHERWISE RE-EXAMINED IN ANY COURT OF THE UNITED STATES, THAN ACCORDING TO THE RULES OF THE COMMON LAW.

After the evidence has been heard by a jury and a verdict rendered in a lower court, it is within the power of a higher court to order a new trial because of some error in the procedure at the first trial. But this provision of the constitution requires, in effect, that where questions of fact have been determined by a jury in a lower court, they must not be re-determined by a higher court without a jury. Otherwise the constitutional right of trial by jury could be defeated in a roundabout way. A higher court, sitting without a jury, can overrule a lower court on points of law; but as to matters of fact it can only require that the facts be re-examined according to the rules of common law, that is by a jury.

ARTICLE VIII

> EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENTS INFLICTED.

These prohibitions leave the courts a good deal of discretion. What is excessive bail? It all depends on the nature of the offence and the likelihood that the prisoner would evade punishment by flight. So with excessive fines. It depends on the circumstances of the case. The prohibition of cruel and unusual punishments was intended to prevent such things as the branding of convicts, torture, and various other methods of punishment which were common in the days when the constitution was being framed. The Supreme Court has

permitted a good deal of latitude as respects "unusual" punishment. Electrocution, when first introduced, was certainly an unusual punishment, but was held not to come within the terms of this prohibition.

ARTICLE IX

THE ENUMERATION IN THE CONSTITUTION, OF CERTAIN RIGHTS, SHALL NOT BE CONSTRUED TO DENY OR DISPARAGE OTHERS RETAINED BY THE PEOPLE.

ARTICLE X

THE POWERS NOT DELEGATED TO THE UNITED STATES BY THE CONSTITUTION, NOR PROHIBITED BY IT TO THE STATES, ARE RESERVED TO THE STATES RESPECTIVELY, OR TO THE PEOPLE.

These two amendments were intended to make doubly clear a fundamental principle of the constitution, namely, that it is a grant of rights and powers to the nation and that neither rights nor powers are deemed to be withdrawn from the states or the people except as therein provided.

ARTICLE XI

THE JUDICIAL POWER OF THE UNITED STATES SHALL NOT BE CONSTRUED TO EXTEND TO ANY SUIT IN LAW OR EQUITY, COMMENCED OR PROSECUTED AGAINST ONE OF THE UNITED STATES BY CITIZENS OF ANOTHER STATE, OR BY CITIZENS OR SUBJECTS OF ANY FOREIGN STATE.

This amendment was a sequel to the decision in the famous case of Chisholm *v.* Georgia (1793). The circumstances attending its adoption have already been explained (p. 105).

ARTICLE XII

THE ELECTORS SHALL MEET IN THEIR RESPECTIVE STATES AND VOTE BY BALLOT FOR PRESIDENT AND VICE PRESIDENT, ONE OF WHOM, AT LEAST, SHALL NOT BE AN INHABITANT OF THE SAME STATE WITH THEMSELVES; THEY SHALL NAME IN THEIR BALLOTS THE PERSON VOTED FOR AS PRESIDENT, AND IN DISTINCT BALLOTS THE PERSON VOTED FOR AS VICE PRESIDENT, AND THEY SHALL MAKE DISTINCT LISTS OF ALL PERSONS VOTED FOR AS PRESIDENT, AND OF ALL PERSONS VOTED FOR AS VICE PRESIDENT, AND OF THE NUMBER OF VOTES FOR EACH, WHICH LISTS THEY SHALL SIGN AND CERTIFY, AND TRANSMIT SEALED TO THE SEAT OF GOVERNMENT OF THE UNITED STATES, DIRECTED TO THE PRESIDENT OF THE SENATE; — THE PRESIDENT OF THE SENATE SHALL, IN THE PRESENCE OF THE SENATE AND HOUSE OF REPRESENTATIVES, OPEN ALL THE CERTIFICATES AND THE VOTES SHALL THEN BE COUNTED; THE PERSON HAVING THE GREATEST NUMBER OF VOTES FOR PRESIDENT SHALL BE THE PRESIDENT, IF SUCH NUMBER BE A MAJORITY OF THE WHOLE NUMBER OF ELECTORS APPOINTED; AND IF NO PERSON HAVE SUCH MAJORITY, THEN FROM THE PERSONS HAVING THE HIGHEST NUMBERS NOT EXCEEDING THREE ON THE LIST OF THOSE VOTED FOR AS PRESIDENT, THE HOUSE OF REPRESENTATIVES SHALL CHOOSE IMMEDIATELY, BY BALLOT, THE PRESIDENT. BUT IN CHOOSING THE PRESIDENT, THE VOTES SHALL BE TAKEN BY STATES, THE REPRESENTATION FROM EACH STATE HAVING ONE VOTE; A QUORUM FOR THIS PURPOSE SHALL CONSIST OF A MEMBER OR MEMBERS FROM TWO-THIRDS OF THE STATES, AND A MAJORITY OF ALL THE STATES SHALL BE NECESSARY TO A CHOICE.

AND IF THE HOUSE OF REPRESENTATIVES SHALL NOT CHOOSE A PRESIDENT WHENEVER THE RIGHT OF CHOICE SHALL DEVOLVE UPON THEM, BEFORE THE FOURTH DAY OF MARCH NEXT FOLLOWING, THEN THE VICE PRESIDENT SHALL ACT AS PRESIDENT, AS IN CASE OF THE DEATH OR OTHER CONSTITUTIONAL DISABILITY OF THE PRESIDENT. THE PERSON HAVING THE GREATEST NUMBER OF VOTES AS VICE PRESIDENT, SHALL BE THE VICE PRESIDENT, IF SUCH NUMBER BE A MAJORITY OF THE WHOLE NUMBER OF ELECTORS APPOINTED, AND IF NO PERSON HAVE A MAJORITY, THEN FROM THE TWO HIGHEST NUMBERS ON THE LIST, THE SENATE SHALL CHOOSE THE VICE PRESIDENT; A QUORUM FOR THE PURPOSE SHALL CONSIST OF TWO-THIRDS OF THE WHOLE NUMBER OF SENATORS, AND A MAJORITY OF THE WHOLE NUMBER SHALL BE NECESSARY TO A CHOICE. BUT NO PERSON CONSTITUTIONALLY INELIGIBLE TO THE OFFICE OF PRESIDENT SHALL BE ELIGIBLE TO THAT OF VICE PRESIDENT OF THE UNITED STATES.

The original provision for the election of a President and Vice President proved to be defective. It stipulated that each elector should vote for two persons without designating which was the elector's choice for President and which for Vice President. Then the person receiving the highest number of electoral votes was to be given the higher office, while the second-highest candidate was to have the Vice Presidency as a sort of consolation prize. This procedure led to serious difficulty at the election of 1800 when Thomas Jefferson and Aaron Burr each received an equal number of votes. Both these candidates had been put forward by the same political party, with the intention that Jefferson should be chosen President and Burr Vice President. But every Democratic

elector, in accordance with what he believed to be his duty, voted for both, with the result that Jefferson and Burr each received seventy-three electoral votes.

Now the constitution had been foresighted enough to make provision that in case of a tie, the House of Representatives should determine the choice, and the House did so; but only after an exciting contest in which the opponents of Jefferson came within an ace of giving the presidency to Burr, thus turning the Democratic slate end for end. At any rate the episode proved that the existing procedure was defective and might lead to various embarrassments under the party system. Accordingly the Twelfth Amendment to the Constitution was proposed by Congress and speedily adopted by the requisite number of states. By this amendment it is provided that the electors shall "name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President." In other words, the electors conduct two elections instead of one.

The amendment, it will be observed, makes other changes in electoral procedure. For example, the original constitution provided that when the election of a President was thrown into the House of Representatives, that body should make its choice from "the five highest on the list." The Twelfth Amendment restricts the choice to the three highest, thus reducing the chance of a deadlock in the House through the scattering of votes among so many candidates.

An unintentional omission from the original constitution was also corrected by the concluding sentence of the Twelfth Amendment. The constitution in its original form provided that no one except a natural-born citizen or a citizen of the United States at the adoption of the constitution should be eligible to the office of President. But it imposed no such limitation in the case of the Vice President. That being the case, what would happen if a naturalized citizen were elected

Vice President and then succeeded to the presidency through the death or resignation of a President? To forestall any possible tangle on this point, the Twelfth Amendment provides that no person constitutionally ineligible to the higher office shall be eligible to the lower one.

For about seventy years following the adoption of the Twelfth Amendment, presidential elections were held without mishap. At every election, with one exception, some candidate obtained a clear majority of all the electoral votes. The exception was in 1824, when no candidate received a majority and the House of Representatives decided the election by choosing John Quincy Adams. It was not until the election of 1876 that a new and unforeseen difficulty arose. At the Hayes-Tilden election of that year there were controversies in several of the states as to which slate of presidential electors had been chosen at the polls. From several states, accordingly, two different sets of electoral votes were received by the authorities in Washington.

Who should determine which of these sets of electoral votes ought to be counted? There was nothing in the constitution itself or in the federal laws to provide a satisfactory answer. To make matters worse, the Senate contained a Republican majority while the Democrats had a majority in the House of Representatives. And the joint rules of the two Houses provided that no disputed electoral returns should be counted unless both the Senate and the House of Representatives, acting separately, should concur in voting to count them. In this case, of course, there was no possibility of concurrence. To solve the deadlock it was agreed by the leaders of both Houses that a special commission of fifteen persons should be created, five from the Senate, five from the House, and five justices of the Supreme Court. Such a commission was duly constituted. After hearing both sides of the controversy, it ruled that Rutherford B. Hayes had been elected by a major-

ity of one electoral vote and he was duly inaugurated in March, 1877. To prevent a recurrence of any such complication, Congress later passed a law providing that in the case of disputed electoral votes, each state must determine which set of presidential electors had been chosen in that state.

ARTICLE XIII

SECTION 1. NEITHER SLAVERY NOR INVOLUNTARY SERVITUDE, EXCEPT AS A PUNISHMENT FOR CRIME WHEREOF THE PARTY SHALL HAVE BEEN DULY CONVICTED, SHALL EXIST WITHIN THE UNITED STATES, OR ANY PLACE SUBJECT TO THEIR JURISDICTION.

Three amendments to the constitution (Articles XIII, XIV, and XV) are the aftermath of the Civil War. The first of the three abolished slavery. There is a popular impression that slavery was abolished throughout the United States by the issue of Lincoln's Emancipation Proclamation, but this famous proclamation freed the slaves within the Confederate lines only. It did not abolish slavery in those parts of the Southern states which were being occupied by the Northern armies.

The original constitution avoided using the terms slave or slavery, although more than one of its provisions deal with the subject by implication. In abolishing human servitude, however, there was no such circumlocution.

SECTION 2. CONGRESS SHALL HAVE POWER TO ENFORCE THIS ARTICLE BY APPROPRIATE LEGISLATION.

Under the provision of this section, Congress has on more than one occasion attempted to compel the Southern states to refrain from legal discrimination between negroes and white persons (for example, in the use of hotels, theaters, railroad

trains, etc.). The Supreme Court has held that no such authority is given to Congress by this section.

ARTICLE XIV

SECTION 1. ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE.

The original constitution, as has been said, used the word "citizen" but did not define the term. In the Dred Scott case (1856), the Supreme Court held that a person could be a citizen of a state without being a citizen of the United States, and after the close of the Civil War (1866) Congress passed a statute providing that all persons born in the United States and not subject to any foreign power were to be deemed citizens. This statute was followed, two years later, by the adoption of this section of the Fourteenth Amendment which makes the matter clear beyond question. Since 1868 anyone who is a citizen of the United States, whether by birth or by naturalization, becomes ipso facto a citizen of that state in which he takes up his residence.

The phrase "and subject to their jurisdiction" requires a word of comment. It means that birth in the United States is not conclusive as establishing American citizenship; one must be born within the jurisdiction as well as within the boundaries. Hence children born to foreign ambassadors stationed in the United States are not American citizens by birth, because foreign embassies are deemed by international law to be outside the jurisdiction of the nation in which they are situated. On the other hand, a person may be an American citizen by birth even though not born within the boundaries; for example, by being born on an American vessel navigating the high seas, or at an American embassy abroad.

When a child is born within the United States, and subject to the jurisdiction thereof, no law of Congress or of a state legislature can operate to debar such individual from citizenship. Congress has by statute forbidden the naturalization of Chinese, and the Supreme Court has held that Congress had the right to do this; but the children of Chinese parents born within the United States are citizens by birth, and that status cannot be denied them by Congress or any other authority. Congress, however, may make rules concerning the forfeiture of American citizenship, even in the case of those who have acquired that status by birth.

> NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES;

The privileges and immunities of American citizens are set forth in the constitution and in the first ten amendments. These privileges or immunities must not be abridged by either federal or state law. For example, it has been held that the right to bring such suits in the federal courts is a privilege, and that state laws forbidding citizens of a state to bring suits in the federal courts are unconstitutional. Corporations are not citizens of the United States under the terms of the foregoing provision, but they are included within the word "persons" as used in the next paragraph.

> NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW;

This, it will be noted, is an application to the states of a provision which was placed as a limitation upon Congress by the terms of the Fifth Amendment. The phrase "due process of law" has already been explained (p. 143).

NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS.

In brief this means that there must be no unreasonable discrimination created by state laws. State laws must treat all classes alike. This does not prevent a reasonable classification of persons and the application of uniform rules to each class.

SECTION 2. REPRESENTATIVES SHALL BE APPORTIONED AMONG THE SEVERAL STATES ACCORDING TO THEIR RESPECTIVE NUMBERS, COUNTING THE WHOLE NUMBER OF PERSONS IN EACH STATE, EXCLUDING INDIANS NOT TAXED.

This section abolishes the provision (p. 7) in the original constitution which stipulated that in apportioning representatives among the several states free white persons should be counted at par while all other persons should be treated at three-fifths of their actual number.

BUT WHEN THE RIGHT TO VOTE AT ANY ELECTION FOR THE CHOICE OF ELECTORS FOR PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES, REPRESENTATIVES IN CONGRESS, THE EXECUTIVE AND JUDICIAL OFFICERS OF A STATE, OR THE MEMBERS OF THE LEGISLATURE THEREOF, IS DENIED TO ANY OF THE MALE INHABITANTS OF SUCH STATE, BEING TWENTY-ONE YEARS OF AGE, AND CITIZENS OF THE UNITED STATES, OR IN ANY WAY ABRIDGED, EXCEPT FOR PARTICIPATION IN REBELLION, OR OTHER CRIME, THE BASIS OF REPRESENTATION THEREIN SHALL BE REDUCED IN THE PROPORTION WHICH THE NUMBER OF SUCH MALE CITIZENS SHALL BEAR TO THE WHOLE NUMBER OF MALE CITIZENS TWENTY-ONE YEARS OF AGE IN SUCH STATE.

The intent of this provision was to prevent Southern states from denying the suffrage to negroes, and to provide an appropriate penalty in any case where this might be done. But the intent has not been fulfilled. The Southern states have found it possible by various ways to secure the exclusion from the suffrage of the great mass of colored citizens. Congress has been repeatedly importuned to exercise its powers under this amendment and to reduce the representation from those Southern states which exclude negro citizens, but it has never been willing to do so.

> *SECTION* 3. NO PERSON SHALL BE A SENATOR OR REPRESENTATIVE IN CONGRESS, OR ELECTOR OF PRESIDENT AND VICE PRESIDENT, OR HOLD ANY OFFICE, CIVIL OR MILITARY, UNDER THE UNITED STATES, OR UNDER ANY STATE, WHO, HAVING PREVIOUSLY TAKEN AN OATH, AS A MEMBER OF CONGRESS, OR AS AN OFFICER OF THE UNITED STATES, OR AS A MEMBER OF ANY STATE LEGISLATURE, OR AS AN EXECUTIVE OR JUDICIAL OFFICER OF ANY STATE, TO SUPPORT THE CONSTITUTION OF THE UNITED STATES, SHALL HAVE ENGAGED IN INSURRECTION OR REBELLION AGAINST THE SAME, OR GIVEN AID OR COMFORT TO THE ENEMIES THEREOF. BUT CONGRESS MAY BY A VOTE OF TWO-THIRDS OF EACH HOUSE, REMOVE SUCH DISABILITY.

The intent of this section was to debar from future office-holding those who, having been public officials sworn to support the constitution, had supported the Confederacy during the Civil War. Very soon, however, most of the disabilities were removed. In 1868 a full pardon was unconditionally granted to all who had been engaged in the Southern cause, but the law still forbade anyone who had left the army or navy of the United States to aid the South from ever holding

another office in the army or navy. This disability was not removed until 1898.

SECTION 4. THE VALIDITY OF THE PUBLIC DEBT OF THE UNITED STATES, AUTHORIZED BY LAW, INCLUDING DEBTS INCURRED FOR PAYMENT OF PENSIONS AND BOUNTIES FOR SERVICES IN SUPPRESSING INSURRECTION OR REBELLION, SHALL NOT BE QUESTIONED. BUT NEITHER THE UNITED STATES NOR ANY STATE SHALL ASSUME OR PAY ANY DEBT OR OBLIGATION INCURRED IN AID OF INSURRECTION OR REBELLION AGAINST THE UNITED STATES, OR ANY CLAIM FOR THE LOSS OR EMANCIPATION OF ANY SLAVE; BUT ALL SUCH DEBTS, OBLIGATIONS AND CLAIMS SHALL BE HELD ILLEGAL AND VOID.

SECTION 5. THE CONGRESS SHALL HAVE POWER TO ENFORCE, BY APPROPRIATE LEGISLATION, THE PROVISIONS OF THIS ARTICLE.

During the Civil War the nation had rolled up a debt of over a billion dollars. On the other hand the Confederate states, both as a group and individually, had borrowed nearly an equal amount from their own citizens as well as from foreign countries. The intent of these sections was that debts incurred by the federal government should be held valid and unquestioned, while all indebtedness incurred by the Confederacy or by the individual states of the South should be null and void. These sections have proved effective.

ARTICLE XV

SECTION 1. THE RIGHT OF CITIZENS OF THE UNITED STATES TO VOTE SHALL NOT BE DENIED OR ABRIDGED BY THE UNITED STATES OR BY ANY STATE ON ACCOUNT OF RACE, COLOR, OR PREVIOUS CONDITION OF SERVITUDE.

SECTION 2. THE CONGRESS SHALL HAVE POWER TO ENFORCE THIS ARTICLE BY APPROPRIATE LEGISLATION.

Of all the provisions in the constitution or its amendments, this one has been the most freely honored in the breach. Its intent is perfectly plain; namely, to protect the negro from a denial of suffrage by any state; but it has not by any means achieved the end desired. The Supreme Court has prevented to the best of its ability all denials of suffrage on the grounds enumerated, but it has not been able to keep some of the Southern states from gaining their end.

ARTICLE XVI

THE CONGRESS SHALL HAVE POWER TO LAY AND COLLECT TAXES ON INCOMES, FROM WHATEVER SOURCE DERIVED, WITHOUT APPORTIONMENT AMONG THE SEVERAL STATES, AND WITHOUT REGARD TO ANY CENSUS OR ENUMERATION.

The original constitution provided that direct taxes, if levied by Congress, must be apportioned among the several states in accordance with their respective populations. In due course the question arose as to whether an income tax was a direct tax within the meaning of the constitution. When Congress passed the income tax law of 1894, this issue came to the Supreme Court for decision. The law of 1894 taxed, among other things, all income derived from land. The Supreme Court held that a tax on the income from land was in effect a tax upon the land itself, and inasmuch as a tax on land was a direct tax, it would be necessary to apportion the tax upon the income of land among the several states in proportion to their population. Not having made such provision for apportionment, the income tax law of 1894 was declared unconstitutional. The purpose of the Sixteenth Amendment

was to permit the levying of income taxes by Congress without apportionment, and this article is the basis of the present federal income tax law. The words "from whatever source derived" might seem to be clear enough; nevertheless the Supreme Court has held that these words do not authorize the taxing of such salaries as are protected in the constitution against being diminished, — for example, the salaries of federal judges.

ARTICLE XVII

THE SENATE OF THE UNITED STATES SHALL BE COMPOSED OF TWO SENATORS FROM EACH STATE, ELECTED BY THE PEOPLE THEREOF, FOR SIX YEARS; AND EACH SENATOR SHALL HAVE ONE VOTE. THE ELECTORS IN EACH STATE SHALL HAVE THE QUALIFICATIONS REQUISITE FOR ELECTORS OF THE MOST NUMEROUS BRANCH OF THE STATE LEGISLATURES.

WHEN VACANCIES HAPPEN IN THE REPRESENTATION OF ANY STATE IN THE SENATE, THE EXECUTIVE AUTHORITY OF SUCH STATE SHALL ISSUE WRITS OF ELECTION TO FILL SUCH VACANCIES; PROVIDED, THAT THE LEGISLATURE OF ANY STATE MAY EMPOWER THE EXECUTIVE THEREOF TO MAKE TEMPORARY APPOINTMENTS UNTIL THE PEOPLE FILL THE VACANCIES BY ELECTION AS THE LEGISLATURE MAY DIRECT.

THIS AMENDMENT SHALL NOT BE SO CONSTRUED AS TO AFFECT THE ELECTION OR TERM OF ANY SENATOR CHOSEN BEFORE IT BECOMES VALID AS PART OF THE CONSTITUTION.

Originally the members of the national Senate were chosen by the state legislatures. For more than a century that method was followed. Each state, in the first instance, was

left to determine the procedure by which the choice should be made; whether by its two legislative chambers acting separately or in joint session. But controversies sometimes arose and prevented any choice being made at all. In 1866, therefore, Congress passed a statute making the procedure uniform for all the states. In brief, the provision of this statute was that the two branches of the state legislature should first ballot separately, and if they could not agree on the choice of a Senator in that way, they were to meet in joint session and keep balloting day after day until someone obtained a majority. If a vacancy in the senatorial representation from any state occurred at a time when the state legislature was not in session, the governor of the state was empowered to name some qualified person to serve until the legislature could meet and make a choice.

During the latter years of the nineteenth century and the early part of the twentieth, a movement for the direct election of senators gained headway. Some of the states devised a plan by which they virtually secured the popular election of their senators notwithstanding the provisions of the constitution. What they did was to hold a senatorial primary and pledge every candidate for the state legislature to support "the people's choice" as determined by such primary election. Prior to 1913 more than half the states had succeeded, by this device, in letting the people choose their senators in fact if not in form. The legislature became a mere ratifying body.

Senators are now directly chosen by the voters of each state at large, but no state elects both its senators in the same year unless an unexpected vacancy occurs in one of the senatorships. When a vacancy is created by the death, disqualification, or resignation of a senator from any state, the governor of that state issues a writ for a special election, unless a regular polling day happens to be near at hand. Pending this election,

the governor may appoint some qualified person to serve as senator temporarily, provided the legislature has empowered him to do so.

ARTICLE XVIII

SECTION 1. AFTER ONE YEAR FROM THE RATIFICATION OF THIS ARTICLE THE MANUFACTURE, SALE, OR TRANSPORTATION OF INTOXICATING LIQUORS WITHIN, THE IMPORTATION THEREOF INTO, OR THE EXPORTATION THEREOF FROM THE UNITED STATES AND ALL TERRITORY SUBJECT TO THE JURISDICTION THEREOF FOR BEVERAGE PURPOSES IS HEREBY PROHIBITED.

SECTION 2. THE CONGRESS AND THE SEVERAL STATES SHALL HAVE CONCURRENT POWER TO ENFORCE THIS ARTICLE BY APPROPRIATE LEGISLATION.

In general the provisions of this article are clear enough, but two or three matters ought to be explained. In the first place, the Eighteenth Amendment does not prohibit the possession, purchase, or use of intoxicating liquors. It prohibits the manufacture, sale, importation, exportation, and transportation of intoxicants. Second, the provisions of the Eighteenth Amendment apply not only to continental United States but to all territory which is subject to American jurisdiction. Third, the prohibition applies to intoxicating liquors "for beverage purposes" and does not include the manufacture, sale, or transportation of alcoholic liquors for mechanical or medicinal use. Finally, it will be noted that the national and state governments have *concurrent* power to enforce this article. Several of the states have made use of this concurrent power by passing enforcement laws which are in some cases more rigid than the Volstead Act by which Congress undertook to carry the Eighteenth Amendment into effect.

SECTION 3. THIS ARTICLE SHALL BE INOPERATIVE UNLESS IT SHALL HAVE BEEN RATIFIED AS AN AMENDMENT TO THE CONSTITUTION BY THE LEGISLATURES OF THE SEVERAL STATES, AS PROVIDED IN THE CONSTITUTION, WITHIN SEVEN YEARS FROM THE DATE OF THE SUBMISSION HEREOF TO THE STATES BY THE CONGRESS.

This was a novel provision, containing as it does a limitation on the space of time within which ratification by the various legislatures must take place. No one of the preceding seventeen amendments contained any such time limit. As a matter of fact, the limit did not prove necessary. Three-fourths of the state legislatures ratified the Eighteenth Amendment within two years after its submission.

ARTICLE XIX

SECTION 1. THE RIGHT OF CITIZENS OF THE UNITED STATES TO VOTE SHALL NOT BE DENIED OR ABRIDGED BY THE UNITED STATES OR BY ANY STATE ON ACCOUNT OF SEX.

SECTION 2. CONGRESS SHALL HAVE POWER TO ENFORCE THIS ARTICLE BY APPROPRIATE LEGISLATION.

This amendment represents the culmination of the movement for universal suffrage. Equal suffrage was first established in Wyoming (1869), but there were no extensions to any other state until near the close of the nineteenth century. Then the movement for nation-wide equal suffrage began to gain appreciable headway, and during the war years it became irresistible.

APPENDIX

APPENDIX

CONSTITUTION OF THE UNITED STATES[1]

PREAMBLE

We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

LEGISLATIVE DEPARTMENT

Section 1. Two Houses

1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. House of Representatives

1. The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

3. Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound

[1] In this reprint of the Constitution the headings have been inserted and the punctuation modernized.

to service for a term of years, and excluding Indians not taxed, *three-fifths of all other persons*.[1] The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and, until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Section 3. Senate

1. The Senate of the United States shall be composed of two Senators from each state chosen by the legislature thereof [2] for six years; and each Senator shall have one vote.

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year; so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.[3]

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

[1] Annulled by the Thirteenth and Fourteenth Amendments.
[2] Superseded by the Seventeenth Amendment.
[3] See Seventeenth Amendment.

4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

5. The Senate shall choose their other officers, and also a President *pro tempore*, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the members present.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit, under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment, according to law.

Section 4. Elections and Meetings of Congress

1. The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each state by the legislature thereof: but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Section 5. Powers and Duties of the Houses

1. Each House shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

2. Each House may determine the rules of the proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

3. Each House shall keep a journal of its proceedings, and, from time to time, publish the same, excepting such parts as may, in their judgment, require secrecy; and the yeas and nays of the members

of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

Section 6. Privileges of and Restrictions on Members

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to, and returning from, the same; and for any speech or debate in either House, they shall not be questioned in any other place.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person, holding any office under the United States, shall be a member of either House during his continuance in office.

Section 7. Revenue Bills: Veto of President

1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.

2. Every bill which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and, if approved by two-thirds of that House, it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall

not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Section 8. Legislative Powers of Congress

The Congress shall have power:

1. To lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare, of the United States; but all duties, imposts, and excises, shall be uniform throughout the United States:

2. To borrow money on the credit of the United States:

3. To regulate commerce with foreign nations, and among the several states, and with the Indian tribes:

4. To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States:

5. To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures:

6. To provide for the punishment of counterfeiting the securities and current coin of the United States:

7. To establish post offices and post roads:

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries:

9. To constitute tribunals inferior to the Supreme Court:

10. To define and punish piracies and felonies, committed on the high seas, and offences against the law of nations:

11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water:

12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years:

13. To provide and maintain a navy:

14. To make rules for the government and regulation of the land and naval forces:

15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions:

16. To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by Congress:

17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places, purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings: — And

18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9. Prohibitions upon the United States

1. The migration or importation of such persons, as any of the states, now existing, shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

2. The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

3. No bill of attainder, or *ex post facto* law, shall be passed.

4. No capitation, or other direct tax, shall be laid, unless in proportion to the *census* or enumeration herein before directed to be taken.[1]

5. No tax or duty shall be laid on articles exported from any state.

6. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall

[1] See Sixteenth Amendment.

vessels bound to, or from, one state, be obliged to enter, clear, or pay duties, in another.

7. No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Section 10. Prohibitions upon the States

1. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

EXECUTIVE DEPARTMENT: THE PRESIDENT AND VICE-PRESIDENT

Section 1. Term: Election: Qualifications: Salary: Oath of Office

1. The Executive power shall be vested in a President of the United States of America. He shall hold his office during the term

of four years, and together with the Vice President, chosen for the same term, be elected as follows:

2. Each state shall appoint, in such manner as the legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives, to which the state may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit, under the United States, shall be appointed an Elector.

3. [The Electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one, who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose, by ballot, one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall, in like manner, choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.] [1]

4. The Congress may determine the time of choosing the Electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

5. No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be

[1] Superseded by the Twelfth Amendment.

eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

7. The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive, within that period, any other emolument from the United States, or any of them.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation:

9. "I do solemly swear (or affirm), that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Section 2. President's Executive Powers

1. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers, and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but

the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Section 3. President's Executive Powers (*continued*)

1. He shall, from time to time, give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Section 4. Impeachment

1. The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

JUDICIAL DEPARTMENT

Section 1. Courts: Terms of Office

1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Section 2. Jurisdiction

1. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and

treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a state and citizens of another state,[1] between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects.

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

3. The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state the trial shall be at such place or places as the Congress may by law have directed.

Section 3. Treason

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

2. The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted.

ARTICLE IV

RELATIONS OF STATES

Section 1. Public Records

1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And

[1] Modified by the Eleventh Amendment.

the Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. Rights in One State of Citizens of Another State

1. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.[1]

2. A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

3. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Section 3. New States: Territories

1. New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.

2. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Section 4. Protection to States by the Nation

1. The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

[1] Compare Fourteenth Amendment.

ARTICLE V

AMENDMENT

1. The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first Article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

NATIONAL DEBTS: SUPREMACY OF NATIONAL LAW: OATH

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

3. The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound, by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

ESTABLISHMENT OF CONSTITUTION

1. The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

AMENDMENTS[1]

ARTICLE I

FREEDOM OF RELIGION, OF SPEECH, AND OF THE PRESS: RIGHT OF PETITION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II

RIGHT TO KEEP ARMS

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III

QUARTERING OF SOLDIERS IN PRIVATE HOUSES

No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, but in a manner to be prescribed by law.

[1] The first ten Amendments, known as the Bill of Rights, were adopted in 1791.

ARTICLE IV

SEARCH WARRANTS

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V

CRIMINAL PROCEEDINGS

No person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war, or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.[1]

ARTICLE VI

CRIMINAL PROCEEDINGS (*continued*)

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

[1] See Amendment XIV, Sec. 1, which extends part of this restriction to the States.

ARTICLE VII

JURY TRIAL IN CIVIL CASES

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII

EXCESSIVE PUNISHMENTS

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX

UNENUMERATED RIGHTS OF THE PEOPLE

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X

POWERS RESERVED TO STATES

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

ARTICLE XI[1]

SUITS AGAINST STATES

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

[1] Adopted in 1798 to protect the sovereignty of the States.

ARTICLE XII

ELECTION OF PRESIDENT AND VICE PRESIDENT

1. The Electors shall meet in their respective states, and vote by ballot for President and Vice President, one of whom, at least shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which lists they shall sign, and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such a majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in case of the death, or other constitutional disability, of the President.[1]

2. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of Electors appointed; and if no person have a majority, then, from the two highest numbers on the list, the Senate shall choose the Vice President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators; a majority of the whole number shall be necessary to a choice.[1]

3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.

[1] Adopted in 1804, superseding Article II, Sec. 1.

ARTICLE XIII[1]

SLAVERY

Section 1. Abolition of Slavery

Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Power of Congress

Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV[2]

CIVIL RIGHTS: APPORTIONMENT OF REPRESENTATIVES: POLITICAL DISABILITIES: PUBLIC DEBT

Section 1. Civil Rights

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Apportionment of Representatives

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation

[1] Adopted in 1865. [2] Adopted in 1868.

therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. Political Disabilities

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. Public Debt

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

Section 5. Powers of Congress

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ARTICLE XV[1]

RIGHT OF SUFFRAGE

Section 1. Right of Negro to Vote

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

[1] Adopted in 1870.

Section 2. Power of Congress

The Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XVI[1]

INCOME TAX

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

ARTICLE XVII[2]

SENATE: ELECTION: VACANCIES

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, That the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

ARTICLE XVIII[3]

NATIONAL PROHIBITION

SECTION 1 — After one year from the ratification of this article the manufacture, sale or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

[1] Adopted in 1913. [2] Adopted in 1913. [3] Adopted in 1919.

SECTION 2 — The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

SECTION 3 — This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years of the date of the submission hereof to the States by Congress.

ARTICLE XIX [1]

WOMAN SUFFRAGE

SECTION 1 — The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

SECTION 2 — Congress shall have power to enforce this article by appropriate legislation.

[1] Adopted in 1920.

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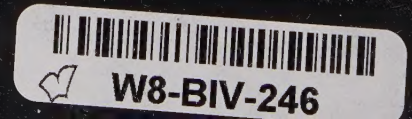
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